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No. 91-904

In The

Supreme Court of the United States

October Term 1992

CONCRETE PIPE AND PRODUCTS OF CALIFORNIA, INC.,

Petitioner,

vs.

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX
VOLUME I, PAGES 1-216

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Petition For Certiorari Filed December 3, 1991
Certiorari Granted May 26, 1992

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DOCKET ENTRIES

This case before the Court is a consolidation of three separate actions. Initially, Respondent Construction Laborers Pension Trust for Southern California ("CLPT") brought an action against Cen-Vi-Ro Concrete Pipe and Products Co., Inc. in the United States District for the Central District of California, Case No. 82-5184. At approximately the same time, Petitioner Concrete Pipe and Products Company of California ("CPP") brought an action against CLPT in the United States District Court for the Eastern District of California, which action was subsequently transferred to the United States District Court for the Central District of California, Case No. 83-0132. Case No. 83-0132 was consolidated under Case No. 82-5184.

The third action was brought by CPP against CLPT pursuant to 29 U.S.C. § 1401(b)(2) in the United States District Court for the Central District of California, Case No. 88-5759. Case No. 88-5759 was also consolidated under Case No. 82-5184.

At no stage in this case has the existence of the three separate actions presented substantive or procedural issues distinct from the merits of the case. The three actions were consolidated into one case, and it was the District Court's decision in this one consolidated case that was appealed to the United States Court of Appeals for the Ninth Circuit. To avoid confusion for the Court, the Docket Entries are listed separately under each of Case No. 82-5184, Case No. 83-0132, and Case No. 88-5759.

Case No. 82-5184

10/05/82	1.	Fld. complt. Issd summs.
		• • •
12/28/82	5.	Fld deft ANSWER TO COMPLAINT
		• • •
11/15/83	22.	Fld deft memo of Concrete Pipe & Products in supp of motn for S/J
11/21/83	23.	Not of mot fr S/J 12-5-83 10:00 a.m. Plaintiff
		• " •
11/15/83	26.	Mot fr S/J Defendant
	27.	Declaration of William Street, III
11/23/83	28.	Memo of P&A of construction laborers pension tr. fr So. Cal. in opp to concrete pipe & products co. of Cal. mot fr S/J pltf & contr-deft
		• • •
12/01/83	32.	Ord denhng x-mots fr S/J
		• • •
02/15/84	47.	Motn on Concrete Pipe & Products Co fr S/J. Defendant
		• • •
	49.	Stip of facts on x-motns fr S/J. Defendant Constructn Laborers

	50.	Declratn of Dennis R. Murphy re: Transcript of depos of Stanley R. Navas, William H. Street III & Benjamin Erhardt. Defendant Concrete Pipe
	51.	Notc of motn fr S/J; memo of P/A retnbl 3/19/84, 10AM. Defendant Constructn Laborers
	52.	Declratn of Patrick J. Morrison. Defendant Concrete Pipe
	53.	Notc of hrng on motn fr S/J retnbl 3/19/84, 10AM. Defendant Concrete Pipe
	54.	Memo in suppt of motn fr S/J. Defendant Concrete Pipe
		• • •
02/24/84	57.	Brief in opp to motn of Constructn Laborers Pension, etc. Defendant
	58.	Declaration of Dennis R. Murphy re transcript of depos of Stanley R. Navas, William H. Street III & exh to depo of Stanley R. Navas. Defendant
02/27/84	59.	Stmt of genuine issues of fact. Plaintiffs
02/28/84	60.	Memo of P/A in opp. Plaintiffs
		• • •
03/02/84	62.	Declaration of Dennis R. Murphy re: Transcript of depo of William H. Street, III. Plaintiffs
	63.	Reply brief of CP&P to Clplt's opp to motn fr S/J. Defendant

	64.	Reply to Concrete Pipe & Products Co's opp to. S/J. Plaintiffs
		* * *
	66.	MO: Cross motns for S/J tkn under submission.
		* * *
04/04/84	68.	ORD granting in part plft mt for S/J, denying deft Concrete Pipes mot fr S/J, & compel ptys to subm to arbitratn
04/03/84	69.	Notc of transf frm MML to HLH. MO
		* * *
05/04/84	71.	Fld deft's NOTC OF APPEAL to 9th Cir. C/A frm Ord ent 4/4/84.
		* * *
01/09/86	88.	FILING & SPREADING MANDATE OF THE 9TH CCA dismissing appeal. (ENT 1/22/86)
		* * *
12/22/88	112.	ORD tht actns 82-5184 & 88-5759 are consolidated
		* * *
05/05/89	118.	Notc & mot fr S/J or partl S/J pltf CLPT
	119.	Memo P&A in supp mot S/J etc pltf CLPT
05/17/89	120.	Opp to mot fr S/J etc pltf Concrete Pipe

	121.	Stmt of gen issues pltf Concrete Pipe
05/18/89	122.	Memo of opp to Concrete mot for S/J pltf
05/22/89	123.	Reply on CP&P mot for S/J etc pltf
05/25/89	124.	Ntc of ldging oridg rec of arb. plft
	125.	Opp to confirmatin nof arb award pltf
		* * *
07/05/89	127.	ORDER tht CPP is treated as petn to vacate arb awrd & is DENIED; Mot of CLPT to confirm arb award is GRANTED; to extent tht mot to confirm seeks to "modify" awrd, it is treated as a mot to vaçate & is DENIED; CLPT is to submit form of jgmnt (ENT 7-6-89) mld copies parties/w/ntc
08/04/89	128.	Deft in CV-82-5184-HLH, Pltf in CV-83-132-HLH & Plft/Petner in CV-88-5759-HLH, Fld Notc of Appl to 9th CCA frm ord re cross-mtns to vacate/modify/ confirm arib entrd 7-5-89, 7-10-89 in cases 82-5184-HLH, * * * , 88-5759-HLH and 83-132-HLH. $105.00 Flng & Doc Fees Paid.

Case No. 83-0132

10/06/82	1.	Fld cmplnt.
12/27/82	2.	Fld ans to complnt and counter-claim.

12/28/82	3.	Stpln re transfer of action; ORD thereon. (EDP) JS-6.
12/29/82		Orig file record w/crtfd cpy of transfer ord, & docket, sent to USDC, Central of CA.
1/10/83		Fld cc Ord of Transf, cc docket & cc ltr of transfer. Attys notified.
4/12/83	4.	Fld Ord (MML) (WMB) transfring actn to cal of Judge Malcolm M. Lucas fr all fur proceeding. notc parties.
4/3/84	5.	Notc of transfer of civ actn from caseload of Judge Lucas to caseload of Judge Hupp. MO
7/7/89	6.	MO: the Ord in CV82-5184-HLH and CV88-5759-HLH dtd 07/05/89 is also applicable to this case & the propsd Jdgmnt shld include this case number. [Ent 07/10/89] mld cpys, Notc. MD JS-6.
8/4/89		Deft in CV-82-5184-HLH, Pltf in CV-83-132-HLH & Pltf/Petner in CV-88-5759-HLH, Fld Notc of Appl to 9th CCA frm ord re cross-mtns to vacate/modify/confirm arib entrd 7-5-89, 7-10-89 in cases 82-5184-HLH, * * * , 88-5759-HLH and 83-132-HLH. $105.00 Flng & Doc Fees Paid.

Case No. 88-5759

9/26/88	1.	Complt. Issd Summs.
		* * *
10/6/88	4.	ORD (LTL) (HLH) transfrng actn to cal of Judge HARRY L. HUPP for all fur procedgs. Case may be ref to Mag REICHMANN for discvry. cc ptys.
		* * *
11/14/88	6.	OSC re consolidation to CV-82-5184 HLH, in writing by 11/30/88 why the actns shld not be joined. No oral argument will be heard re this matter unless ord by the Crt.
11/15/88	7.	ANSWER TO THE COMPLT & THE TRUST'S COUNTERCLAIM AGNST CONCRETE PIPE & PRODUCTS CO. OF CALIF.
		* * *
12/9/88	11.	REPLY TO COUNTER-CLAIM OF CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIF.
		* * *
12/22/88	13.	ORD consolidating actns # 82-5184-HLH & CV-88-5759 HLH are consolidated for all purposes. All docs fld hereafter shall bear the names & #'s of both actns, w/ # CV-82-5184-HLH listed 1st.

* * *

5/5/89	15.	Memo of P/A in supprt of pltf motn for S/J & alter motn for partial S/J, pltf.
5/5/89	16.	Notc of motn & motn for S/J & alter motn for partial S/J, retbl 6/5/89, 1:30 PM. Pltf
5/5/89	17.	Statement of facts supprting motn for S/J. pltf
5/9/89	18.	Memo of P/A in opp to Concrete Pipe & Products Co.'s motn for S/J & alter motn for partial S/J. Pltf
5/23/89	19.	Memo of P/A in supprt of its motn to confirm, or modify & confirm, arbitrator's award. Pltf

* * *

6/5/89	21.	ORDER tht CPP mot is treated as petn to vacate arb awrd & is DENIED; mot of CLPT to confrm arb awrd is GRANTED; to extent tht mot to confirm seeks to "modify" award, it is treated as a mot to vacate & is DENIED; CLPT is to submit form of jgmnt (ENT 7/6/89) mld copies parties/ w/notc MD JS 6

8/4/89	Deft in CV-82-5184-HLH, Pltf in CV-83-132 HLH & Pltf/Petner in CV-88-5759-HLH, Fld Notc of Appl to 9th CCA frm ord re cross mtns to vacate/modify/confirm arib. entrd 7-5-89, 7-10-89 in cases 82-5184-HLH, * * * , 88-5759-HLH and 83-132-HLH. $105.00 Flng & Doc Fees Paid.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS' PENSION TRUST FOR SOUTHERN CALIFORNIA, Plaintiff, vs. CEN-VI-RO CONCRETE PIPE & PRODUCTS CO., INC., Defendant.	Case No. 82 5184 MMC (JRx) COMPLAINT FOR WITHDRAWAL LIABILITY (Filed Oct. 5, 1982)

Now comes the plaintiff Construction Laborers Pension Trust for Southern California ("CLPT") and, for a cause of action against defendant Cen-Vi-Ro Concrete Pipe & Products Co., Inc. ("Cen-Vi-Ro") alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to the provisions of section 4301 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. Section 1451.

2. Venue is laid in this district pursuant to the provisions of Section 4301(d) of ERISA, as amended, 29 U.S.C. Section 1451(d).

THE PARTIES

3. Plaintiff CLPT is an express Trust organized under and pursuant to the provisions of Section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. The CLPT is a Multi-Employer Benefit Plan within the meaning of Section 3(37) and 4001(a)(3) of ERISA, 29 U.S.C. Sections 1002 (37)(A) and 1301(a)(3), as amended by Sections 302(a) and 402(a)(1) of the Multi-employer Pension Plan Amendments Act of 1980 ("MPPAA").

4. Plaintiff is informed and believes, and upon that ground alleges, that Cen-Vi-Ro is a California corporation having a principal place of business in Lockeford, California.

CLAIM FOR RELIEF

5. Cen-Vi-Ro has been bound to collective bargaining agreements with the Laborers International Union of North America and affiliates thereof (the "Union"). The terms of said collective bargaining agreements required,

inter alia, Cen-Vi-Ro to make contributions to CLPT for each hour of covered employment worked or paid for.

6. Cen-Vi-Ro has contributed to the CLPT pursuant to these agreements. These contributions include contributions for work performed after April 28, 1980.

7. After April 28, 1980, Cen-Vi-Ro ceased to have an obligation to contribute to the CLPT, within the meaning of Sections 4203(a) and (b) of ERISA, as amended, 29 U.S.C. Sections 1383(a) and (b).

8. CLPT is informed and believes, and upon that ground alleges, that from and after November 1, 1981, Cen-Vi-Ro, following negotiations with the Union, declared that it was no longer obligated to contribute to the CLPT and continued to perform work within the jurisdiction of its previously-existing collective bargaining agreement with the Union, of the type for which contributions to the CLPT were previously required.

9. By virtue of the cessation of its obligation to contribute to the CLPT, defendant has effected a "complete withdrawal" from the CLPT within the meaning of Section 4203 of ERISA, as amended, 29 U.S.C. Section 1383.

10. At all times material hereto, CLPT was under an obligation, pursuant to the provisions of Section 4202 of ERISA, as amended, 29 U.S.C. Section 1382, to determine the amount of defendant's withdrawal liability, to notify defendant of the amount of their withdrawal liability, and to effect collection of the total liability amount due from the defendant.

11. Pursuant to the provisions of Section 4201(b) and 4211 of ERISA, as amended, 29 U.S.C. Sections 1381(b) and 1391, CLPT has made the required calculation of defendant's withdrawal liability, and has determined that Cen-Vi-Ro's withdrawal liability is a sum not less than Two Hundred Sixty-Eight Thousand, One Hundred Sixty-Eight Dollars, Eighty-One Cents ($268,168.81). The amount of said withdrawal liability assessments is subject to adjustment to a higher figure, in the event that the Pension Benefit Guaranty Corporation issues regulations authorizing the calculation of withdrawal liability in a greater amount.

12. On or about January 20, 1982, pursuant to its obligation under Section 4219(b)(1) of the MPPAA, 29 U.S.C. Section 1399(b)(1), CLPT notified Cen-Vi-Ro of the amount of its withdrawal liability and demanded payment thereof, in accordance with a prescribed schedule.

13. The aforesaid notification informed Cen-Vi-Ro that its withdrawal liability had been determined to be a sum not less than Two Hundred Sixty-Eight Thousand, One Hundred Sixty-Eight Dollars, Eighty-One Cents ($268,168.81); and further notified Cen-Vi-Ro that it could elect to pay the aforesaid sum, within sixty days, in a single payment, or, in the alternative, make monthly installment payments of Two Thousand, Eight Hundred Twenty-One Dollars, Eighty Cents ($2,821.80) for a period of 131 months and a final monthly payment of Two Thousand, Two Hundred Twenty-Six Dollars, Seventy-Four Cents ($2,226.74).

14. Thereafter, Cen-Vi-Ro failed, within sixty days following notification of the amount of its withdrawal

liability, to make any installment payment on its withdrawal liability or to make the alternative lump sum payment of its total withdrawal liability.

15. On or about August 12, 1982, the CLPT notified Cen-Vi-Ro that it had failed to make either a lump sum payment of its total withdrawal liability or the first required installment payment in satisfaction of its withdrawal liability. CLPT further notified Cen-Vi-Ro that if it failed to cure this delinquency within 60 days, Cen-Vi-Ro would be in default, and CLPT would demand payment of the entire amount of Cen-Vi-Ro's withdrawal liability, and would initiate suit to collect said sum, together with such additional sums as CLPT may be entitled to collect under the provisions of the MPPAA.

16. Cen-Vi-Ro has indicated to counsel for the CLPT that it will not make payment toward Cen-Vi-Ro's withdrawal liability to the CLPT. The CLPT is entitled pursuant to Section 4301(b) of ERISA, as amended; 29 U.S.C. Section 1451, to initiate suit to compel an employer to pay its withdrawal liability.

17. By virtue of Cen-Vi-Ro's failure as to its statutory obligation to pay the sums demanded by the CLPT, there is now due, owing and unpaid the delinquent monthly payments of Cen-Vi-Ro's withdrawal liability from March 22, 1982 to the date of the filing of this complaint, plus monthly payments which are not paid after the filing of this complaint, plus interest, liquidated damages, attorneys' fees and costs as allowed by Section 502(g)(2) of ERISA, as amended, 29 U.S.C. Section 1132(g)(2), together with such additional legal and equitable relief as the Court shall deem necessary to enforce Cen-Vi-Ro's payment obligation.

WHEREFORE, plaintiff prays:

A. That it have judgment against Cen-Vi-Ro for the delinquent monthly payments of Cen-Vi-Ro's withdrawal liability and a declaration that further monthly payments must be timely made pending resolution of the dispute between the parties as to the amount of liability owed the CLPT.

B. For interest on the aforesaid sums at the rate permitted by Section 502(g)(2) of ERISA, as amended;

C. For additional sums, equal to the greater of liquidated damages provided by the Pension Plan of the Construction Laborers Pension Trust for Southern California or interest on the aforesaid sums, in the amount specified by Section 502(g)(2) of ERISA, as amended;

D. For reasonable attorneys' fees;

E. For costs of suit;

F. For such other legal and equitable relief as to the Court shall seem [sic] necessary for the enforcement of defendant's payment obligation.

Dated: October 5, 1982

COX, CASTLE & NICHOLSON and
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, Plaintiff, -vs- THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Defendant.	NO. F-82-389 EDP COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (Filed Oct. 6, 1982)

1. Plaintiff, CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, a California Corporation (hereinafter "CP & P) sues for declaratory and injunctive relief against the enforcement, prosecution or collection of

claims made by Defendant, THE CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA (hereinafter "TRUST") against CP & P, under the color of withdrawal liability provisions of the Multi-Employer Pension Plan Amendments Act of 1980 (hereinafter "MPPAA") [29 U.S.C. § 1381, *et set.*], and pursuant to the procedures prescribed therein.

2. CP & P terminated its business in Shafter, California, stopped producing products on August 17, 1979, and commenced the removal of its machinery in September of 1979. The closure process lasted into October, 1979, at which point all of the employees at CP & P had been terminated. By this action, CP & P permanently ceased all covered operations under the TRUST and had thus accomplished a complete withdrawal from the TRUST as that term became defined upon the passage of MPPAA one year later, on September 26, 1980. [29 U.S.C. § 1381, *et. seq.* and 29 U.S.C. § 1382(b)(2)].

3. By letter dated August 12, 1982 (a copy of which is attached hereto as EXHIBIT "A"), the TRUST assessed CP & P withdrawal liability according to the TRUST's letter of January 20, 1982, asserting that liability in the sum of $268,168.81. (A copy of the January 20, 1982 letter is attached hereto as EXHIBIT "B"). The two letters demand that CP & P pay the aforesaid withdrawal liability in the single lump sum no later than October 12, 1981, or in the alternative, commence making monthly installment payments in the amount of $2,821.80 no later than October 12, 1982.

4. At the time of its plant closure and the termination of business, CP & P had paid to the TRUST

$102,656.68 representing all monies owed to the TRUST under its applicable collective bargaining agreements. CP & P's only other payment to the TRUST was in the sum of $48.60 paid to cover 40.5 hours worked by an employee hired in May 1980 to assist in shipping the last remaining production equipment from Shafter. The demand for and payment of another two and one-half times its contractual commitment is likely to make it onerous for CP & P to continue in business.

5. The TRUST has made the demand despite the fact that it is solvent and has at all times and continues to be able to make full payment of all benefits coming due to beneficiaries in a timely fashion.

6. CP & P seeks a declaration that it is not liable to the TRUST under the MPPAA for withdrawal liability in any amount because Plaintiff had ceased operations and withdrawn from the plan prior to the retroactive effective date of the plan and thus incurred no liability under the statute itself. CP & P further seeks declaration that it is not liable to the TRUST under the MPPAA for withdrawal liability in any amount because, on its face, and as retroactively applied to it, the statute deprives CP & P of its property without due process of law, takes its property for public use without just compensation, is vague, arbitrary, and capricious, lacks rational basis, abrogates the rights of access to the Courts and trial by jury, and is in violation of the Fifth and Seventh Amendments of the United States Constitution.

7. CP & P also seeks a temporary restraining order and preliminary injunction during the pendency of this action against collection of any withdrawal liability, the

declaration of default, and the expiration time in which to seek arbitration as well as a permanent injunction barring attempted enforcement of MPPAA.

JURISDICTION OF VENUE

8. This action arises under the Employee Retirement Income Security Act of 1974 (ERISA) [29 U.S.C. § 1001, *et. seq.*], as amended by the MPPAA, and arises out of the Fifth and Seventh Amendments of the United States Constitution. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331. Declaratory and related injunctive relief are authorized by 28 U.S.C. §§ 2001 and 2002.

9. Venue is laid in this Court pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

10. CP & P is a corporation organized and existing under the laws of the State of California. Its principal place of business is in Sacramento, California. One of CP & P's plants, the one involved in the action herein, is located in Shafter, California. CP & P is a manufacturer of concrete pipe.

11. Defendant, TRUST, which is an unincorporated association with a principal place of business at 3540 Wilshire Boulevard, Suite 512, Los Angeles, California 90010, is sued as an entity pursuant to Section 502(d) of ERISA [29 U.S.C. § 1132(d)]. The TRUST is administered by U.S. Administrators, 3540 Wilshire Boulevard, Los Angeles, California 90010. The Trustees of Defendant

TRUST have designated U.S. Administrators as agent for service of legal process.

12. The TRUST exists pursuant to various collective bargaining agreements and related declarations of TRUST between the SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS, AFL-CIO, and their affiliated LOCAL UNIONS (hereinafter the "UNION"), and various multi-employer associations as well as independent employers such as CP & P.

13. The Declaration of Trust establishing the TRUST and Pension Plan, Article IV, §§ 4.07 and 4.08, provides as follows:

> "Section 4.07. Neither the Associations or any officer, agent, employee or committee member of the Associations shall be liable to make Contributions to the Fund or with respect to the Pension Plan, except to the extent that he or it may be an Individual Employer required to make Contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any Individual Employer to the Fund, or with respect to the Pension Plan, shall be limited to the payments required by the collective bargaining agreements with respect to his or its individual or joint venture operations, and in no event shall be or it be liable or responsible for any portion of the Contributions due from the Individual Employers with respect to the operations of such Individual Employers. The Individual Employers shall not be required to make any further payments or Contributions to the cost of operation of the Fund or of the Pension Plan,

> except as may be hereafter provided in the collective bargaining agreements.
>
> Section 4.08. Neither the Associations, any Individual Employer, the Union, any Local Union nor any Employee shall be able or responsible for any debts, liabilities or obligations of the Fund or the Trustees."

14. At all times relevant hereto, the trustees of the TRUST, the Administrators of the Pension Plan, the representatives of the multi-employer associations, and the Union have maintained and made public their position that the Pension Plan is a defined contribution plan as defined by ERISA, Section 3(34), and that it is not a defined benefit plan, as defined by Section 3(35) thereof.

THE BASIS FOR PLAINTIFF'S CLAIMS

15. On or about December 6, 1976, CP & P purchased from CEN-VI RO COMPANY, its assets, including its plant in Shafter, California. Prior to said purchase, the employees of CEN-RI VO [sic] were represented for the purposes of collective bargaining by the Union. Prior to the purchase CEN-VI RO had entered into a collective bargaining agreement requiring the payment of trust fund benefits for its employees.

16. After its purchase of the Shafter Plant, CP & P recognized the Union as the collective bargaining representative of its employees and began to abide by the collective bargaining agreement executed with CEN-VI RO CORPORATION. On November 27, 1978, CP & P renewed said agreement. The 1978 renewal like the previous agreement, required contributions to be made to

the TRUST on behalf of the employees. By the end of December, 1979, CP & P had contributed $102,656.68 to the TRUST on behalf of its employees.

17. On August 17, 1979, CP & P ceased production at its plant, sold its inventory and commenced the closure of the plant. By November of 1979, CP & P had removed a large majority of its machinery and production equipment and had shipped such machinery and production equipment to its facilities in Sacramento, California. All employees covered by the plan were terminated no later than the end of October, 1979. No employees covered under the TRUST were re-employed until May of 1980.

18. In May of 1980, CP & P was to ship its last piece of machinery from the Shafter Plant to its Sacramento facilities. To assist in the loading of the truck, it hired one of the employees covered by the terms of the TRUST who worked for 40.5 hours. For his work in May, 1980, CP & P contributed $48.60 to the TRUST by payment in June of 1980. At the conclusion of May, 1980, all machinery at the plant was totally dismantled and removed from the premises.

19. At the time CP & P ceased doing business at its Shafter Plant and thus ceased participation in the TRUST, it was not liable under the terms of the TRUST agreement to make any further contributions to the TRUST with respect to the Pension Plan, and CP & P's liability for any portion of the contributions due from other individual employers or for the debts, liabilities or obligations of the TRUST was expressly, specifically and unequivocally disclaimed by Article IV, §§ 4.07 and 4.08 of the Declaration of Trust. At the time of the plant closure there were no

plans to reopen it. It was not until two years after the plant's closure that CP & P reopened the plant.

20. Nevertheless, the TRUST had asserted a claim against CP & P in the amount of $268,168.81, an amount which exceeds payments required under CP & P's collective bargaining agreements by a factor of over two and one-half times. Said claim is totally in excess of any amounts that were required of Plaintiff under the terms of its collective bargaining agreements or under the Declaration of Trust itself. The TRUST relies, as a sole basis for its claim, on the provisions of the MPPAA that purport to impose on employers withdrawing on or after April 29, 1980, a time prior to the enactment of the MPPAA, a previously non-existent liability for the alleged unfunded vested liability of the pension plan, which liability the MPPAA requires the TRUST to ascertain, to assert and enforce.

21. The TRUST has demanded that Plaintiff pay the entire $268,168.81 immediately or commence making monthly installments in the amount of $2,821.80 by October 12, 1982.

22. It makes this demand despite the fact that it has refused to respond to the request propounded under MPPAA for information on the Trust's calculations of unfunded vested liability. If CP & P complied with the monthly demand, which includes interest charges unauthorized by the statute, CP & P would actually be required to pay $374,704.34 in fulfillment of the purported obligation at an annual rate of $33,861.60.

23. The $268,168.81 claimed represents a portion of all the alleged unfunded vested benefits of TRUST, arbitrarily allocated to Plaintiff without regard to the cause of, or any relationship of Plaintiff to, any part of any such unfunded benefits, and without regard to the existence, or absence of any past employer-employee relationship between Plaintiff and any participant in, or beneficiary of, the pension plan. The withdrawal liability claim greatly exceeds Plaintiff's total contributions to the TRUST prior to its termination of its business and, by definition, withdrawal from participation in the TRUST's Pension Plan.

UNDER THE TERMS OF THE MPPAA, CP & P IS NOT SUBJECT TO WITHDRAWAL LIABILITIES

24. Section 4201(b)(2) and 4203(a) of the MPPAA [U.S.C. §§ 1380 and 1382] provide that a complete withdrawal under the terms of the Act occur when an employer permanently ceases all covered operations under the plan. Under the definition, CP & P accomplished a complete withdrawal in August, 1979, over seven months prior to the retroactive date of MPPAA and over one year prior to the passage of MPPAA. It is the position of CP & P that under the terms of MPPAA no liability can be assessed against it since it effecutated [sic] a complete withdrawal prior to the retroactive effective date of MPPAA. It is the position of the TRUST that CP & P's cessation of all covered activity did not constitute a withdrawal and thus it became subject to MPPAA. For this reason, a dispute as to the interpretation of MPPAA exists between the parties and CP & P is entitled to a declaration by this Court that it is not covered under

MPPAA and thus has no withdrawal liability, no duty to arbitrate and is entitled to attorney's fees.

THE INFRINGEMENT OF PLAINTIFF'S CONSTITUTIONAL RIGHTS

25. Section 4219 and 4221(d) of the MPPAA [29 U.S.C. § 1399, 1401(d)], requires any employer who contests either the existence, the amount, or payment schedule or the withdrawal liability claimed, to nevertheless commence payment of the purported obligation as demanded before the employer has had an opportunity to contest its validity. Moreover, the MPPAA affords the employer no procedural protection whatsoever against the risk of an erroneous deprivation of its property rights prior to a hearing on its exceptions to the withdrawal liability claim. The ex parte determinations made by the TRUST, regarding the existence and amount of withdrawal liability, are not subject to the scrutiny of any disinterested third party prior to payment being required. No bond is required to secure the return of any payments made by the employer, and no interest is paid thereon, if the employer successfully contests the existence or amount of the withdrawal liability claimed at a post-payment hearing. In fact there exists no provision for repayment to the employer of overpayments. For each and all of the foregoing reasons, §§ 4219 and 4221(d) of the MPPAA deprive Plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

26. Section 4221 of the MPPAA [29 U.S.C. Section 1401] compels an employer who disputes either the

existence or amount of the claimed withdrawal liability to arbitrate the dispute rather than contest its validity in a court of law wherein the facts upon which the existence and amount of the withdrawal liability depends may be determined by a jury. Moreover, § 4221 precludes the assertion of constitutional defenses in the course of the arbitration proceeding and give the withdrawal liability determinations of the TRUST a presumption of correctness that has no rational basis in fact, thereby delegating to a private party having a self-interest in the outcome the power to make presumptively valid and potentially conclusive determinations of law and fact effecting the existence and amount of the withdrawal liability due. For each and all of the foregoing reasons, Section 4221 of the MPPAA deprives CP & P of its constitutional right of access to the courts and due process of law guaranteed by the Fifth Amendment, and to a jury determination of contested issues of fact guaranteed by the Seventh Amendment to the Constitution of the United States.

27. Section 3201(a) of the MPPAA [29 U.S.C. § 1381(a)] imposes liability on an employer who effects a complete withdrawal from a multi-employee [sic] pension fund. Retroactively applied to a withdrawal occurring prior to enactment if [sic] the MPPAA into law, it impairs and abrogates preexisting contractual rights and statutory limitations of liability upon which CP & P was entitled to rely in assessing its potential exposure to the TRUST on termination of its business. As retroactively applied to an event occurring prior to its enactment into law, the MPPAA failed to give CP & P fair warning of an opportunity to avoid withdrawal liability by altering its behavior. Moreover, the wholly retroactive withdrawal

liability imposed in a confiscatory amount is determined and measured by factors that are wholly outside the control of CP & P, and are largely unrelated to any act, omission or fault of CP & P, or to any employer-employee relationship in which CP & P was involved at any time. For each and all of the foregoing reasons, § 4201(a) of the MPPAA, as retroactively applied to CP & P, deprives CP & P of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

28. Section 4201(a) of the MPPAA, as retroactively applied to a withdrawal occurring prior to enactment of the MPPAA into law, impairs and abrogates contractual rights without affording any compensation whatsoever for its loss. Moreover, the wholly retroactive withdrawal liability which the TRUST seeks to impose on the basis of § 4201(a) greatly dilutes the aggregate net worth of CP & P. If required to pay the retroactively imposed withdrawal liability claimed by the TRUST under § 4201(a), CP & P's assets will be seriously dissipated. Notwithstanding the debilitating impact on CP & P of the withdrawal liability which the TRUST seeks to impose on CP & P under the MPPAA, no compensation whatsoever will be paid to CP& P. For each and all of the foregoing reasons, § 4201(a) of the MPPAA, as the TRUST seeks retroactively to apply it to CP & P, would effect a taking of CP & P's property for public use without affording just compensation in violation of the Fifth Amendment to the Constitution of the United States.

29. Section 4201(a) of the MPPAA, both on its face and as retroactively applied to a "complete withdrawal"

as defined in § 4203, [29 U.S.C. § 1383], affords no intelligible basis upon which liability can be ascertained or measured. Because of the ambiguity and vagueness of the terms used to determine the existence and the amount of the imposed withdrawal liability, of ordinary imposed men of ordinary intelligence necessarily must guess as to the meaning, and differ as to the application, of the statutory language upon which the existence and the amount of withdrawal liability depends. The MPPAA fails to give fair warning of the conduct for which, and the circumstances in which, withdrawal liability will be imposed, and its provisions for measuring the amount of liability to be imposed are so standardless that they are incapable of rational, consistent and fair application. For each and all of the foregoing reasons, the MPPAA deprives CP & P of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

30. The TRUST is a Taft-Harltey [sic] Trust Fund. As provided 29 U.S.C. § 186, the TRUST is composed of an equal number of union and management trustees, each ostensibly safeguarding the rights of its respective constituencies. Upon passage of ERISA in 1974, the obligation of the Trustees became clouded by an apparent conflicting obligation to pension plan beneficiaries. Indeed, recent Supreme Court pronouncements hold that the trustees are fiduciaries obligated to protecting the plan beneficiaries only. The confusion caused by these conflicting Congressional enactments had left all parties unsure of their rights and obligations. The MPPAA does not take account of this confusion, which made it impossible for CP & P to take defensive measure to lessen any

unfunded liability to the TRUST. The MPPAA gives carte blanche authority to parties over whom CP & P has no control to seize CP & P's assets on demand in satisfaction of a liability CP & P had no hand in creating. For each of the foregoing reasons, the MPPAA deprives CP & P of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

31. ERISA provides that Pension Plans are either "defined benefit" plans or "defined contribution" plans. The MPPAA arbitrarily assumes that multi-employee pension plans in the construction industry, like the instant pension plan, are necessarily defined benefit pension plans which promise a certain benefit level to beneficiaries. The instant Pension Plan expressly disclaims any promise of a particular level of benefits, and beneficiaries are all well aware of this. Thus, although Congress may have had the authority to declare that pension plans are a defined benefit plan for such limited purposes as having the Pension Benefit Guarantee Corporation (PBGC) assess such plans a nominal premium in order to finance insurance protection for the vested benefits of pension plan beneficiaries, it is patently irrational and arbitrary for Congress to provide in the MPPAA that multi-employer pension plans are necessarily defined benefit plans for purposes of withdrawal liability. For each and all of the foregoing reasons, the MPPAA deprives CP & P of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

32. The MPPAA is arbitrary and capricious in holding employers, like CP & P, responsible for the unfunded

liability of pension plans. Employers, like CP & P, have no control over the administration of multi-employer pension plans, the setting of benefit levels, investment decisions, etc. To the extent that there is a likelihood that CP & P's withdrawal creates any possibility that "promised" benefits will not be adequately funded, the MPPAA arbitrarily and capriciously holds only employers like CP & P responsible. The MPPAA thereby discriminates against such employers inasmuch as such employers are the least responsible for any unfunded vested liability of the TRUST. Rather, the cause of the problem lies primarily with the beneficiaries themselves, who by demanding and receiving higher wage rates, have made union labor increasingly uncompetitive, and with the Trustees over whom employers, like CP & P, have no control whatsoever and who have set excessively high target benefit levels without providing for a corresponding increase in contribution revenue sufficient to satisfy vested benefits for plan beneficiaries.

33. The TRUST's demand for withdrawal liability payments by CP & P in reliance on MPPAA has seriously and adversely affected CP & P's credit. Compliance with the TRUST's demand would severely jeopardize the solvency and survival of, if not bankrupt CP & P, irreparably injuring CP & P in violation of its above-described constitutional rights.

34. CP & P has no plain, adequate or speedy remedy at law, and this suit for declaratory and injunctive relief as only means for securing relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

A. Assume jurisdiction of this action;

B. Enjoin, *pendente lite*, the TRUST and its Trustees, agents, employees, attorneys, representatives, and/or successors from taking any action whatsoever prescribed by §§4219 and 4221 of the MPPAA [29 U.S.C. §§1399 and 1401] to prosecute, enforce, or collect its withdrawal liability claim or to penalize CP & P for non-compliance with the TRUST's demand for payment thereof and tolling the time to demand arbitration;

C. Enter a declaratory judgment that:

(1) That CP & P ceased all covered operations before the retroactive effective date of MPPAA and thus completely withdrew from the TRUST as that term was later defined in MPPAA so that CP & P is not covered by MPPAA and thus has no withdrawal liability and no duty to arbitrate.

(2) Section 4219 of the MPPAA, 29 U.S.C. §1399, is unconstitutional and void insofar as it infringes the right to due process of law guaranteed by the Fifth Amendment, as alleged in the Complaint herein;

(3) Section 4221 of the MPPAA, [29 U.S.C. §1401], is unconstitutional and void insofar as it infringes the rights to access to the courts and due process of law guaranteed by the Fifth Amendment, and the right to a jury trial guaranteed by the Seventh Amendment, as alleged in the Complaint herein;

(4) Section 4201(a) of the MPPAA, [29 U.S.C. §1381(a)], is unconstitutional and void insofar as it infringes the right to due process of law guaranteed by the Fifth Amendment, as alleged in the Complaint herein;

(5) Section 4201(a) of the MPPAA, [29 U.S.C. §1381(a)], is unconstitutional and void insofar as it infringes the right to due process of law guaranteed by the Fifth Amendment, alleged in the Complaint herein;

D. Grant CP & P its costs and disbursements herein;

E. Grant CP & P attorney's fees under §§ 29 U.S.C. 1451(a)(1) and § 1451(e); and

F. Grant CP & P such other and further relief as the Court may deem appropriate.

DATED: October 5, 1982

DIEPENBROCK, WULFF,
PLANT & HANNEGAN

BY: /s/ Dennis R. Murphy
DENNIS R. MURPHY
Attorneys for Plaintiff,
CONCRETE PIPE
& PRODUCTS CO.

STATE OF CALIFORNIA)
)
U.S. DISTRICT COURT) SS
EASTERN DISTRICT)
COUNTY OF SACRAMENTO)

VERIFICATION

WILLIAM A. STREET, III, being duly sworn, deposes and says:

1. He is the Executive Vice President of CONCRETE PIPE PRODUCTS COMPANY OF CALIFORNIA, Plaintiff herein.

2. He has knowledge of the facts pleaded in the foregoing COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and that, under penalty of perjury, he declares those facts to be true and correct to the best of his information and belief.

Executed this 6th day of October, 1982 at Sacramento, California.

/s/ William A. Street
WILLIAM A. STREET, III

SUBSCRIBED AND SWORN TO
before me this 6th day of October, 1982.

/s/ Alice Hillbun [SEAL]
ALICE HILLBUN
Notary Public

Alice D. Hillbun

EXHIBIT A

COLLECTION OFFICE

THE CONSTRUCTION LABORERS' PENSION TRUST

FOR SOUTHERN CALIFORNIA

3540 Wilshire Boulevard, Suite 512 •
Los Angeles, California 90010

Telephone (213) 383-3151

August 12, 1982 (logo)

Dennis R. Murphy, Esq.
Diepenbrock, Wulff, Plant & Hannegan
455 Capitol Mall
Sacramento, California 95814

Re: Cen-Vi-Ro Concrete Pipe Products Co., Inc.
Account #98973

Dear Mr. Murphy:

In accordance with my letter of July 9, 1982, please be advised that, after review of the above case, the Trusts' co-counsel have recommended that the withdrawal liability billing of January 20, 1982 be pursued.

In light of this determination, we have sent this day, a notice of delinquent payment to Cen-Vi-Ro, a copy of which is enclosed for your information.

We previously discussed the effect that a delay in the Trusts' response to these matters would have on the time limits with respect to arbitration. Mr. Sumner's letter requesting arbitration was received on March 12, 1982, and your letter of May 13, 1982 requesting a "hold" on the time remaining under the statute resulted in 62 days

having expired. The time will start running again on the date you receive this letter.

Should you have any further questions, please contact this office.

Very truly yours,

/s/ Dan O'Connell
DAN O'CONNELL
Collection Office

DO:am

cc: Cen-Vi-Ro
Lionel Richman, Esq.
John S. Miller, Jr., Esq.

EXHIBIT B

COLLECTION OFFICE

THE CONSTRUCTION LABORERS' PENSION TRUST

FOR SOUTHERN CALIFORNIA

3540 Wilshire Boulevard, Suite 512 •
Los Angeles, California 90010

Telephone (213) 383-3151

January 20, 1982 (logo)

CEN-VI-RO Concrete Pipe Products Co., Inc.
P. O. Box 103
Lockeford, California 95237

Gentlemen:

Our records indicate that you have not contributed to the Construction Laborers Pension Trust Fund ("Plan") since February 1981. We are further advised that you have not signed a renewal of a collective bargaining agreement obligating you to continue contributions to the Plan on behalf of the Construction laborers currently in your employ.

Based on this information, we conclude that you have chosen to withdraw from the Plan. Accordingly, you are subject to the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980, a federal enactment amending the Employee Retirement Income Security Act of 1974 ("ERISA").

This statute, as you probably know, provides that when an employer withdraws from participation in a multiemployer pension plan, the withdrawing employer is obligated to the Plan for a portion of the Plan's unfunded vested benefit liabilities as of the end of the Plan year immediately preceding the date of the employer's withdrawal.

Pursuant to the provisions of this 1980 statute and to the implementing regulations promulgated by the Pension Benefit Guaranty Corporation, the Board of Trustees of the Plan have adopted certain methods of calculating the withdrawal liabilities applicable to you. These calculations are summarized on the attached form. They indicate that your withdrawal liability amounts to $268,168.81.

If, as anticipated by the Plan, the Pension Benefit Guaranty Corporation issues regulations on the assumptions

which may be used to calculate withdrawal liability and these assumptions authorize the Plan to assess a withdrawal liability amount which is greater than that set forth in the preceding sentence, then the Plan will deem the withdrawal liability owed by you to be the greater amount.

You may pay the withdrawal liability set forth in the preceding paragraph in a single lump sum payable within 60 days after your receipt of this letter.

Should you decline to so pay, ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980, provides a method for calculating periodic installment payments by which you may satisfy your withdrawal liability arising under the statute. Using this method, we have determined that your withdrawal liability may be satisfied by 132 monthly payments in the amount of $2,821.80, and a final monthly payment of $2,226.74.

You are expressly obligated under Federal Law to commence your monthly payments on March 22, 1982.

Thereafter, your monthly payments are due on the same date of each succeeding month.

The number of months over which your payments are due will increase correspondingly with any withdrawal liability increase resulting from issuance of the Pension Benefits Guaranty Corporation regulations mentioned above. Additionally, the amount of your final and other monthly payments may vary as a result of future regulations; and your obligation may be subject to such additional steps as the Board of Trustees may require in accordance with the law.

Should you fail to make your first monthly payment by its due date, or should you fail to make any subsequent monthly payments when due, ERISA, as amended, provides that you will incur interest charges from the date your payment becomes due until the date payment is finally received. Additionally, you may incur liability for liquidated damages and other sums assessed under the delinquency provisions of the Plans' Trust Agreement. The rate of interest at which you will be assessed is that rate equal to the per annum rate of interest established by the Federal Reserve Board of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act prevailing on the 25th day of the month preceding the date on which your payment became due plus five (5) percent. This rate of interest is subject to change if the Pension Benefit Guaranty Corporation issues regulations providing a different rate of interest.

More importantly, should you fail to pay any monthly payment plus interest within 60 days after receiving written notice from the Plan that such payment is delinquent, or should you commit any other act which the Plan has deemed to constitute a "default" in your payment obligations, ERISA, as amended, provides that the Board of Trustees may deem you to be in default and thereby liable for immediate payment of the outstanding amount of your withdrawal liability plus accrued interest on your total outstanding liability from the due date of the first payment which was not timely made.

This letter is intended to provide you with notice of your liability and payment obligations and of the existence of ERISA, as amended, and of some of its provisions. This

letter is not intended as an explanation of the statute, nor shall it be construed as limiting in any way the rights of the Plan under the statute.

Very truly yours,

/s/ Dan O'Connell
DAN O'CONNELL
Auditor

DO:am

cc: Southern California District Council of Laborers

CERTIFIED MAIL – RETURN RECEIPT

Cen-Vi-Ro Concrete
Pipe & Prod. Co., Inc.
JAN 25 1982
RECEIVED
LOCKEFORD

WORKSHEET FOR ESTIMATING WITHDRAWAL LIABILITY FROM THE SOUTHERN CALIFORNIA LABORERS PENSION TRUST DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

   a. December 31, 1979 $ 146,699.67

   b. December 31, 1980 $ 118,520.96

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

   a. December 31, 1979 $ 273,549,700

   b. December 31, 1980 $ 320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

   a. Divide 1a by 2a .000536282

   b. Divide 1b by 2b .000369838

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

   a. Pool as of December 31, 1979 $ 468,656,500

   b. Pool as of December 31, 1980 $ 45,524,700

5. Your estimated withdrawal assessment before the offset is determined as follows:

   a. Line 3a multiplied by line 4a $ 251,332.05

   b. Line 3b multiplied by line 4b $ 16,836.76

   c. Total of a and b $ 268,168.81

6. Offset amount: $ -0-

   - If line 5c is less than $100,000, then the offset amount equals $50,000.
   - If line 5c is greater than $150,000, then the offset amount equals $0.
   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $ 268,168.81

(Certificate Of Service Omitted In Printing)

JAMES P. WATSON
COX, CASTLE & NICHOLSON
2049 Century Park East, 28th Floor
Los Angeles, California 90067
(213) 277-4222

LAW OFFICES OF LIONEL RICHMAN
1625 W. Olympic Boulevard, Suite 810
Los Angeles, California 90015
(213) 388-5632
Attorneys for Defendants

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, Plaintiff, v. CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Defendant.	)	No. Civ F 82-389-EDP ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND COUNTERCLAIM. (Filed Dec. 27, 1982)

Now comes the defendant, Construction Laborers Pension Trust for Southern California ("CLPT") and answering for itself and for no other party, admits, denies and alleges as follows:

1. Answering paragraph 1, admits that the contents thereof accurately describe the claim made by plaintiff in this action.

2. Answering paragraph 2, denies the allegations of said paragraph 2, except that defendant admits that plaintiff partially curtailed its business operations for some period of time prior to the passage of the MPPAA.

3. Answering paragraph 3, admits the allegations of said paragraph 3.

4. Answering paragraph 4, admits that the payments alleged therein were made to the CLPT; generally denies the remaining allegations of said paragraph 4.

5. Answering paragraph 5, admits that the CLPT is currently able to pay vested benefits as they become due; generally denies that the remaining allegations of paragraph 5 accurately describe the financial condition of the CLPT.

6. Answering paragraph 6, admits that the allegations thereof accurately describe the claims being made by the plaintiff in this action; affirmatively alleges that each of said claims lack merit.

7. Answering paragraph 7, admits that plaintiff seeks the relief described in said paragraph; denies that plaintiff is legally entitled to such relief.

8. Answering paragraph 8, admits that plaintiff purports to invoke jurisdiction on the grounds set forth therein.

9. Answering paragraph 9, admits that plaintiff purports to lay venue on the grounds set forth therein.

10. Answering paragraph 10, states that it is without information or belief sufficient to enable it to answer the allegations contained therein, and placing its denial

upon that ground, generally denies the allegations of paragraph 10, except that defendant admits that plaintiff has an ownership interest in a plant located in Shafter, California.

11. Answering paragraph 11, admits that the defendant CLPT is an express trust, and that plaintiff seeks to bring suit against it pursuant to the provisions of 29 U.S.C. §1132(d); denies, generally and specifically, the remaining allegations of said paragraph 11.

12. Answering paragraph 12, denies that the allegations thereof are an accurate description of the documentation relating to the creation and administration of the CLPT; affirmatively alleges that the CLPT exists pursuant to the provisions of a written Declaration of Trust entered into in 1962 between parties not named in this action.

13. Answering paragraph 13, admits the allegations thereof.

14. Answering paragraph 14, denies that the allegations thereof are a full and accurate statement of the position taken by the persons mentioned therein; admits that, prior to the decision of the Ninth Circuit Court of Appeals in *Connolly v. Pension Benefit Guaranty Corporation*, 581 F.2d 729 (9th Cir. 1978), *cert. denied*, 440 U.S. 935 (1979), certain persons took the position that benefit plans of the type operated by the CLPT were defined contribution plans.

15. Answering paragraph 15, states that it is without information or belief sufficient to enable it to answer the allegations thereof regarding the purchase of the

assets of Cen-Vi-Ro Company; admits the remaining allegations thereof.

16. Answering paragraph 16, admits the allegations thereof.

17. Answering paragraph 17, states that it is without information or belief sufficient to enable it to answer the allegations contained therein, and placing its denial upon that ground, denies the allegations thereof.

18. Answering paragraph 18, admits that the records of plaintiff indicate the employment of at least one individual during May, 1980; states that it is without information or belief sufficient to enable it to answer the remaining allegations of said paragraph, and placing its denial upon that ground, denies each and all of said allegations.

19. Answering paragraph 19, states that it is without information or belief sufficient to enable it to answer the allegations contained therein regarding the closure of plaintiff's business in Shafter, California and the subsequent reopening of said business, and placing its denial upon that ground, denies said allegations; denies that the portions of paragraph 19 purporting to describe plaintiff's obligations with respect to the CLPT are a full and accurate statement thereof; refers to the Trust Agreement and the Collective Bargaining Agreement to which plaintiff was bound for a full and accurate statement of their terms.

20. Answering paragraph 20, admits that the CLPT has assessed a withdrawal liability against plaintiff in the sum of $268,168.81; admits that the CLPT has assessed

such withdrawal liability pursuant to the provisions of the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"); admits that the CLPT is obligated to assess such liability pursuant to the provisions of the MPPAA; denies the remaining allegations of paragraph 20 on the ground that said allegations are unintelligible.

21. Answering paragraph 21, admits the allegations of said paragraph 21.

22. Answering paragraph 22, denies that defendant has refused to furnish any information which it is obligated to supply pursuant to the provisions of the MPPAA; admits the remaining allegations thereof.

23. Answering paragraph 23, admits that the withdrawal liability assessed against plaintiff represents a portion of the calculated unfunded vested liability of the CLPT; denies that said withdrawal liability was arbitrarily allocated to plaintiff, admits that said withdrawal liability assessment is in excess of plaintiff's total prior contributions to the CLPT with respect to its operation in Shafter, California; denies the remaining allegations of paragraph 23.

24. Answering paragraph 24, denies that said paragraph furnishes a full and accurate statement of the circumstances under which "withdrawal" occurs within the meaning of the MPPAA; refers to the terms of the MPPAA for a full and accurate statement of the provisions thereof; denies that plaintiff completely withdrew from the CLPT in August, 1979; denies that paragraph 24 accurately expresses the legal position of the CLPT with respect to plaintiff's withdrawal liability; admits that a dispute exists between plaintiff and the CLPT; denies,

generally and specifically, the remaining allegations of paragraph 24.

25. Answering paragraph 25, denies that said paragraph fully and accurately states the provisions of the statutes referred to therein; denies, generally and specifically, the remaining allegations of said paragraph 25.

26. Answering paragraph 26, denies that the allegations thereof contain a full and accurate statement of the statutory provisions referred to therein; refers to the text of the MPPAA for a full and accurate statement of its terms; specifically denies that the MPPAA deprives plaintiff of constitutional rights guaranteed by the Fifth Amendment and the Seventh Amendment to the U.S. Constitution.

27. Answering paragraph 27, denies that the allegations thereof contain a full and accurate statement of the statutory provisions quoted therein; denies, generally and specifically, each and every, all and singular, the remaining allegations of paragraph 27.

28. Answering paragraph 28, denies that the allegations thereof contain a full and accurate statement of the statutory provisions referred to therein; denies, generally and specifically, each and every, all and singular, the remaining allegations of said paragraph 28, except that defendant admits that the CLPT has assessed a withdrawal liability against plaintiff.

29. Answering paragraph 29, denies, generally and specifically, each and every, all and singular, the allegations of said paragraph 29.

30. Answering paragraph 30, denies that the allegations thereof correctly describe the duties of the Trustees of the CLPT; denies that the description of the Employee Retirement Income Security Act of 1974 contained therein is accurate; denies, generally and specifically, the remaining allegations of said paragraph 30.

31. Answering paragraph 31, denies that the allegations thereof correctly describe applicable provisions of federal law, of the CLPT's Pension Plan, or of the expectations of beneficiaries thereof; denies, generally and specifically, the remaining allegations of said paragraph 31.

32. Answering paragraph 32, denies, generally and specifically, each and every, all and singular, the allegations of said paragraph 32.

33. Answering paragraph 33, states that is without information or belief sufficient to enable it to answer the allegations contained therein, and placing its denial upon that ground, denies, generally and specifically, the allegations of paragraph 33.

34. Answering paragraph 34, denies, generally and specifically, each and every, all and singular, the allegations of paragraph 34.

FIRST AFFIRMATIVE DEFENSE

35. And for a first, separate and distinct affirmative defense, this answering defendant alleges that the Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

36. And for a second, separate and distinct affirmative defense, this answering defendant alleges that plaintiff has failed to exhaust the administrative remedies provided by §4221 of ERISA as amended by the MPPAA, and is precluded from raising any issue herein which might have been resolved through the arbitration procedure set forth in said statute.

THIRD AFFIRMATIVE DEFENSE

37. And for a third, separate and distinct affirmative defense, this answering defendant alleges that plaintiff is precluded from obtaining injunctive relief because of plaintiff's laches.

FOURTH AFFIRMATIVE DEFENSE

38. And for a fourth, separate and distinct affirmative defense, this answering defendant alleges that plaintiff is not entitled to injunctive or other equitable relief because of plaintiff's unclean hands.

COUNTERCLAIM

Now comes the defendant and counter-claimant, Construction Laborers Pension Trust for Southern California ("CLPT"), and, for a cause of action against plaintiff and counter-defendant, Concrete Pipe & Products Company of California ("CPPC"), alleges as follows:

1. This is a mandatory counterclaim, brought pursuant to the provisions of Rule 13(a) of the Federal Rules

of Civil Procedure. This Court has independent jurisdiction of the subject matter of this counterclaim, pursuant to the provisions of §4221(b)(1) of ERISA, as amended by the MPPAA, 29 U.S.C. §1401(b)(1) and pursuant to the provisions of 28 U.S.C. §1331(a) and 28 U.S.C. §1337(a).

2. Counterclaimant CLPT is, and at all times material hereto was, an express trust organized under and pursuant to the provisions of §302(c)(5) of the Labor Management Relations Act of 1947, as amended. Counterclaimant is a multiemployer benefit plan within the meaning of §§3(37)(A) and 4001(a)(3) of ERISA, 29 U.S.C. §1002(37)(A) and 1301(a)(3), as amended by §§302(a) and 402(a)(1) of the MPPAA. Counterclaimant has standing to bring this counterclaim pursuant to the provisions of §502(d)(1) of ERISA, 29 U.S.C. §1132(d)(1).

3. Counterclaimant is informed and believes, and upon that ground alleges, that at all times material hereto, counterdefendant CPPC was and is a corporation duly organized and existing under and by virtue of the laws of the State of California, and that counterclaimant is doing business within the Central District of California.

4. On and prior to July 1, 1980, counterdefendant CPPC was bound to a written Collective Bargaining Agreement which, by its terms, obligated CPPC to make contributions to the counterclaimant CLPT for each hour of work performed by covered laborers.

5. Substantially all the employees with respect to which CPPC had an obligation to contribute to the CLPT were performing work in the building and construction industry, within the meaning of §4203(b)(1)(A) of ERISA, as amended by the MPPAA, 29 U.S.C. §1383(b)(1)(A).

6. On or about November 20, 1981, counterdefendant CPPC permanently ceased to have an obligation to contribute to the CLPT, within the meaning of §4203(b)(2)(A) of ERISA, as amended by the MPPAA, 29 U.S.C. §1383(b)(2)(A).

7. Counterclaimant is informed and believes, and upon that ground alleges, that from and after November 20, 1981, counterdefendant CPPC continued to perform work within the jurisdiction of its previously existing Collective Bargaining Agreement, of the type for which contributions to the CLPT were previously required.

8. The CLPT is an employee benefit plan which primarily covers employees in the building and construction industry, within the meaning of §4203(b)(1)(B)(i) of ERISA, as amended by the MPPAA, 29 U.S.C. §1382(b)(1)(B)(i).

9. By virtue of the cessation of its obligation to contribute to the CLPT, counterdefendant CPPC has effected a "complete withdrawal" from the CLPT within the meaning of §4203 of ERISA, as amended by the MPPAA, 29 U.S.C. §1383.

10. At all times material hereto, the CLPT was under an obligation, pursuant to the provisions of §4202 of ERISA, as amended by the MPPAA, 29 U.S.C. §1382, to determine the amount of CPPC's withdrawal liability, to notify CPPC of the amount of its withdrawal liability, and to effect collection of the total withdrawal liability amount due from the employer.

11. Pursuant to the provisions of §4201(b) and 4211 of ERISA, as amended by the MPPAA, 29 U.S.C.

§§1381(b) and 1391, CLPT has made the required calculation of CPPC's withdrawal liability, and has determined that CPPC's withdrawal liability is a sum not less than $268,168.81.

12. On or about January 20, 1982, pursuant to its obligations under §4219(b)(1) of ERISA, as amended by the MPPAA, 29 U.S.C. §1399(b)(1), the CLPT notified CPPC of the amount of its withdrawal liability and demanded payment thereof, in accordance with a prescribed schedule. A true and correct copy of said notification is attached hereto as Exhibit A.

13. The aforesaid notification informed CPPC that its withdrawal liability had been determined to be a sum not less than $268,168.81, and further notified CPPC that it could elect to pay the aforesaid sum, within 60 days, in a single payment, or in the alternative, make monthly installment payments for a period of 132 months.

14. Following notification by the CLPT, CPPC failed, within 60 days after receipt of notification of the amount of its withdrawal liability, to make any installment payment on its withdrawal liability, or to make the alternative lump sum payment of its total withdrawal liability.

15. On or about August 12, 1982, the CLPT notified CPPC that it had failed to make either a lump sum payment of its total withdrawal liability or the first required installment payment in satisfaction of its withdrawal liability. The CLPT further notified CPPC that if it failed to cure this delinquency within 60 days, CPPC would be in default, and the CLPT would demand payment of the entire amount of CPPC's withdrawal liability,

and would initiate suit to collect said sum, together with such additional sums as the CLPT may be entitled to collect under the provisions of ERISA, as amended by the MPPAA.

16. Within 60 days after notification by the CLPT of its delinquent status, CPPC failed to make any payment whatsoever in satisfaction of its withdrawal liability to the CLPT.

17. By virtue of CPPC's default, the CLPT may, and does hereby, pursuant to the provisions of §4219(c)(5) of ERISA, as amended by the MPPAA, 29 U.S.C. §1399(c)(5), declare the entire amount of CPPC's withdrawal liability due and payable, as of the due date of the first payment not timely made.

18. By virtue of CPPC's default as to its statutory obligation to pay the sums demanded by the CLPT, there is now due, owing and unpaid to the CLPT the sum of $268,168.81, plus interest, liquidated damages, attorneys' fees and costs as allowed by §502(g)(2) of ERISA, as amended, 29 U.S.C. §1132(g)(2), together with such additional legal and equitable relief as the Court shall deem necessary to enforce CPPC's payment obligation.

19. CPPC has failed to invoke and pursue the administrative remedies prescribed by §4221(a) of ERISA, as amended by the MPPAA, 29 U.S.C. §1401(a) for the resolution of disputes regarding an employer's withdrawal liability.

WHEREFORE, counterclaimant prays:

A. That it have judgment against counterdefendant for the sum of $268,168.81;

B. For interest on the aforesaid sum at the rate permitted by §502(g)(2) of ERISA, as amended;

C. For an additional sum, equal to the greater of liquidated damages provided by the Pension Plan of the Construction Laborers Pension Trust for Southern California or interest on the aforesaid sum, in the amount specified by §502(g)(2) of ERISA, as amended;

D. For reasonable attorneys' fees;

E. For costs of suit; and

F. For such other legal and equitable relief as the Court shall deem necessary for the enforcement of CPPC's payment obligation.

DATED: December 16, 1982.

COX CASTLE & NICHOLSON

By /s/ James P. Watson
James P. Watson

Attorneys for Defendant and Counterclaimant

EXHIBIT A

COLLECTION OFFICE

THE CONSTRUCTION LABORERS' PENSION TRUST

FOR SOUTHERN CALIFORNIA

3540 Wilshire Boulevard, Suite 512 •
Los Angeles, California 90010

Telephone (213) 383-3151

January 20, 1982 (logo)

CEN-VI-RO Concrete Pipe Products Co., Inc.
P. O. Box 103
Lockeford, California 95237

Gentlemen:

Our records indicate that you have not contributed to the Construction Laborers Pension Trust Fund ("Plan") since February 1981. We are further advised that you have not signed a renewal of a collective bargaining agreement obligating you to continue contributions to the Plan on behalf of the Construction laborers currently in your employ.

Based on this information, we conclude that you have chosen to withdraw from the Plan. Accordingly, you are subject to the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980, a federal enactment amending the Employee Retirement Income Security Act of 1974 ("ERISA").

This statute, as you probably know, provides that when an employer withdraws from participation in a multiemployer pension plan, the withdrawing employer is obligated to the Plan for a portion of the Plan's unfunded

vested benefit liabilities as of the end of the Plan year immediately preceding the date of the employer's withdrawal.

Pursuant to the provisions of this 1980 statute and to the implementing regulations promulgated by the Pension Benefit Guaranty Corporation, the Board of Trustees of the Plan have adopted certain methods of calculating the withdrawal liabilities applicable to you. These calculations are summarized on the attached form. They indicate that your withdrawal liability amounts to $268,168.81.

If, as anticipated by the Plan, the Pension Benefit Guaranty Corporation issues regulations on the assumptions which may be used to calculate withdrawal liability and these assumptions authorize the Plan to assess a withdrawal liability amount which is greater than that set forth in the preceding sentence, then the Plan will deem the withdrawal liability owed by you to be the greater amount.

You may pay the withdrawal liability set forth in the preceding paragraph in a single lump sum payable within 60 days after your receipt of this letter.

Should you decline to so pay, ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980, provides a method for calculating periodic installment payments by which you may satisfy your withdrawal liability arising under the statute. Using this method, we have determined that your withdrawal liability may be satisfied by 132 monthly payments in the amount of $2,821.80, and a final monthly payment of $2,226.74.

You are expressly obligated under Federal Law to commence your monthly payments on March 22, 1982.

Thereafter, your monthly payments are due on the same date of each succeeding month.

The number of months over which your payments are due will increase correspondingly with any withdrawal liability increase resulting from issuance of the Pension Benefits Guaranty Corporation regulations mentioned above. Additionally, the amount of your final and other monthly payments may vary as a result of future regulations; and your obligation may be subject to such additional steps as the Board of Trustees may require in accordance with the law.

Should you fail to make your first monthly payment by its due date, or should you fail to make any subsequent monthly payments when due, ERISA, as amended, provides that you will incur interest charges from the date your payment becomes due until the date payment is finally received. Additionally, you may incur liability for liquidated damages and other sums assessed under the delinquency provisions of the Plans' Trust Agreement. The rate of interest at which you will be assessed is that rate equal to the per annum rate of interest established by the Federal Reserve Board of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act prevailing on the 25th day of the month preceding the date on which your payment became due plus five (5) percent. This rate of interest is subject to change if the Pension Benefit Guaranty Corporation issues regulations providing a different rate of interest.

More importantly, should you fail to pay any monthly payment plus interest within 60 days after receiving written notice from the Plan that such payment is delinquent, or should you commit any other act which the Plan has deemed to constitute a "default" in your payment obligations, ERISA, as amended, provides that the Board of Trustees may deem you to be in default and thereby liable for immediate payment of the outstanding amount of your withdrawal liability plus accrued interest on your total outstanding liability from the due date of the first payment which was not timely made.

This letter is intended to provide you with notice of your liability and payment obligations and of the existence of ERISA, as amended, and of some of its provisions. This letter is not intended as an explanation of the statute, nor shall it be construed as limiting in any way the rights of the Plan under the statute.

Very truly yours,

/s/ Dan O'Connell
DAN O'CONNELL
Auditor

DO:am

cc: Southern California District Counsel of Laborers

CERTIFIED MAIL - RETURN RECEIPT

Cen-Vi-Ro Concrete
Pipe & Prod. Co., Inc.

JAN 25 1982

RECEIVED
LOCKEFORD

WORKSHEET FOR ESTIMATING WITHDRAWAL LIABILITY FROM THE SOUTHERN CALIFORNIA LABORERS PENSION TRUST DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

a. December 31, 1979	$146,699.67
b. December 31, 1980	$118,520.96

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

a. December 31, 1979	$273,549,700
b. December 31, 1980	$320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

a. Divide la by 2a	$.000536282
b. Divide 1b by 2b	$.000369838

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

a. Pool as of December 31, 1979	$468,656,500
b. Pool as of December 31, 1980	$45,524,700

5. Your estimated withdrawal assessment before the offset is determined as follows:

a. Line 3a multiplied by line 4a	$251,332.05
b. Line 3b multiplied by line 4b	$16,836.76
c. Total of a and b	$268,168.81

6. Offset amount: $ -0-

   - If line 5c is less than $100,000, then the offset amount equals $50,000.

   - If line 5c is greater than $150,000, then the offset amount equals $0.
   - If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $268,168.81

(Certificate Of Service Omitted In Printing)

DENNIS R. MURPHY
DIEPENBROCK, WULFF, PLANT & HANNEGAN
455 Capital Mall, Suite 800
Sacramento, California 95814
Telephone: (916) 444-3910

Attorneys for Defendant,
CEN-VI-RO CONCRETE PIPE
& PRODUCTS CO.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Plaintiff -vs- CEN-VI-RO CONCRETE PIPE & PRODUCTS CO., INC., Defendant.	No. 82-5184 MML (JRx) ANSWER TO COMPLAINT FOR WITHDRAWAL LIABILITY (Filed Dec. 28, 1982)

COMES NOW Defendant, CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, erroneously sued as CEN-VI-RO CONCRETE PIPE & PRODUCTS CO., INC. (hereinafter "CP & P") and for its response to the complaint on file herein, CP & P admits, denies and alleges as follows:

1) In response to Paragraph 1, 2, 4, 5, 12, 13, 14 and 15, Defendant, CP & P, admits the allegations thereof.

2) In response to Paragraph 3, 10 and 11, Defendant lacks sufficient information and belief to enable it to respond thereto and on this basis, denies, generally and specifically, conjunctively and disjunctively, each and every allegation contained therein.

3) In response to the allegations contained within Paragraph 16 and 17 of the complaint on file herein, Defendant denies, generally and specifically, conjunctively and disjunctively, each and every allegation contained therein.

4) In response to Paragraph 6 of the complaint on file herein, Defendant, CP & P, alleges that it ceased covered operations by terminating its business at its plant covered under the Collective Bargaining Agreement requiring contributions to the Construction Laborers Pension Trust for Southern California (hereinafter "C.L.P.T." or "Trust"). Between August and October of 1979, it dismantled its plant and effectuated its plan to terminate its operation entirely. No work was performed under the Collective Bargaining Agreement requiring contributions to C.L.P.T. between November, 1979 and May, 1980. During the first week of May of 1980, one employee was hired to ship the last piece of machinery remaining at the plant of CP & P. Forty-eight Dollars ($48.00) was contributed to C.L.P.T. in June of 1980 for the forty (40) hours of work performed in May, 1980, by the one employee involved in the process of shipping the last piece of machinery. Except as so admitted, the allegations of Paragraph 6 are denied, generally and specifically, conjunctively and disjunctively.

5) In response to Paragraph 7 of the complaint on file herein, CP & P alleges that in August of 1979, it ceased its covered operations and thus withdrew from the C.L.P.T. as that term became defined by the Multi-Employer Pension Plan Amendment Act ("MPPAA"). Except as so admitted, CP & P denies, generally and specifically, conjunctively and disjunctively, each and every allegation contained therein.

6) In response to Paragraph 8 of the complaint on file herein, CP & P alleges that from and after November 1, 1981, it advised the SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS that it no longer had an obligation to recognize and bargain with that Union. Except as so admitted, CP & P denies, generally and specifically, conjunctively and disjunctively, all the allegations contained in Paragraph 8 of the complaint on file herein.

7) In response to the allegations contained in Paragraph 9 of the complaint on file herein, Defendant, CP & P, alleges that it effected a "complete" withdrawal as that term became defined by Section 4203 of E.R.I.S.A., (as amended, 29 U.S.C. §1383) from the C.L.P.T. in August of 1979 when it ceased covered operations. Except as so admitted, Defendant denies, generally and specifically, conjunctively and disjunctively, each and every allegation contained therein.

FIRST AFFIRMATIVE DEFENSE

8) On August 17, 1979, CP & P ceased operation at its plant, sold its inventory and commenced the closure of the plant. By November of 1979, CP & P had removed a

large majority of its machinery and production equipment and had shipped such machinery and production equipment to its facilities in Sacramento, California. All employees covered by the plan were were terminated by no later than the end of October, 1979.

9) Sections 4201(b)(2) and 4203(a) of E.R.I.S.A., as amended, [29 U.S.C. §§1380 and 1382] provide that a complete withdrawal under the term of E.R.I.S.A. occur when an employer permanently ceases all covered operations under the plan. Under that definition, CP & P accomplished a complete withdrawal in August, 1979 over seven (7) months prior to retroactive effective date of MPPAA and over one (1) year prior to the passage of MPPAA. As CP & P withdrew from the plan prior to the retroactive effective date of MPPAA, no liability can be assessed against it.

SECOND AFFIRMATIVE DEFENSE

10) Sections 4219 and 4221(b) of E.R.I.S.A., as amended, [29U.S.C. §§1399, 1401(b)], requires any employer who contests either the existence, the amount, or payment schedule, or the withdrawal liability claims, to nonetheless commence payment of the purported obligations as demanded before the employer has had an opportunity to contest the validity. Moreover, the MPPAA affords the employer no procedural protection whatsoever against the risk of erroneous deprivation of its property rights prior to a hearing on its exceptions to the withdrawal liability claim. The ex parte determinations by the Trust, regarding the existence, an amount of withdrawal liability, are not subject to the scrutiny of any

disinterested third party prior to payments being required. No bond is required to secure the return of any payments made by the employer and no interest paid thereon. If the employer successfully contests the existence or the amount of the withdrawal liability claim at a post-payment hearing, there exists no provision for repayment to the employer of overpayments. For each and all the foregoing reasons, §§4219 and 4221(b) of E.R.I.S.A., as amended, deprive CP & P of its property without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

THIRD AFFIRMATIVE DEFENSE

11) Sections 4211 of E.R.I.S.A., as amended, [29 U.S.C. §1401] compels an employer who disputes either the existence or amount of the claim withdrawal liability to arbitrate the dispute rather than contest its validity in a court of law wherein the facts upon which the existence and amount of the withdrawal liability depends may be determined by a jury. Moreover, §4221 precludes the assertion of constitutional defenses in the course of arbitration proceedings and gives the withdrawal liability determinations of the trust a presumption of correctness that has no rational basis of fact, thereby delegating to a private party having a self interest in the outcome, the power to make presumptably valid and potentially conclusive determinations of law and fact affecting the existence and the amount of withdrawal liability due. for each and all of the foregoing reasons, §4221 of the MPPAA deprives CP & P of its constitutional right of access to the Court and due process of law guaranteed by the Fifth Amendment, and to a jury determination of

contested issues of fact guaranteed by the Seventh Amendment to the Constitution of the United States.

FOURTH AFFIRMATIVE DEFENSE

12) Section 3201(a) of E.R.I.S.A., as amended, [42 U.S.C. §1381(a)] imposes liability on an employer who affects a complete withdrawal from a Multi-Employee [sic] Pension Plan. Retroactively applied to a withdrawal occurring prior to the enactment of MPPAA into law, it impairs and abrogates pre-existing contractual rights and statutory limitations of liability upon which CP & P was entitled to rely in assessing its potential exposure to the trust on determination of its business. As retroactively applied to an event occurring prior to its enactment into law, the MPPAA failed to give CP & P fair warning or an opportunity to avoid withdrawal liability by altering its behavior. Moreover, the whole retroactive liability is determined and measured by factors that are wholly outside the control of CP & P and are largely unrelated to any act, omission, or fault of CP & P, or to any employer-employee relationship in which CP & P was involved at any time. For each and all of the foregoing reasons, §4201(a) of E.R.I.S.A., as amended, as retroactively applied to CP & P, deprived CP & P of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States.

FIFTH AFFIRMATIVE DEFENSE

13) Section 4201(a) of E.R.I.S.A., as amended, as retroactively applied to withdraw occurring prior to the enactment of MPPAA into law, impairs and abrogates

contractual rights without affording any compensation whatsoever for its loss. Moreover, the wholly retroactive withdrawal liability which the Trust seeks to impose on the basis of §4201(a) greatly dilutes the aggregate worth of CP & P. If required to pay the retroactively imposed withdrawal liability claimed by the Trust under §4201(a), CP & P's assets will be seriously dissipated. Notwithstanding the debilitating impact on CP & P of the potential liability which the Trust seeks to impose on CP & P under MPPAA, no compensation whatsoever will be paid to CP & P. For each and all of the foregoing reasons, §4201(a) of E.R.I.S.A., as amended, as the Trust seeks retroactively to apply it to CP & P, would affect a taking of CP & P's property for public use without affording just compensation in violation of the Fifth Amendment to the Constitution of the United States.

SIXTH AFFIRMATIVE DEFENSE

14) Section 4201(a) of E.R.I.S.A., as amended, both on its face and as retroactively applied to a "complete withdrawal" as defined in §4203, [24 U.S.C. §1383] affords no intelligible basis upon which liability can be ascertained or measured. Because of the ambiguity and vagueness of the terms used to determine the existence and the amount of the imposed withdrawal liability, men of ordinary intelligence necessarily must guess as to the meeting [sic], and differ as to the application of the statutory language upon which the existence and amount of withdrawal liability depends. The MPPAA fails to give fair warning of the conduct for which, and the circumstances in which, withdrawal liability may be imposed, and its provisions for measuring the amount of liability to

be imposed are so standardless that they are incapable of rationale, consistent, and fair application. For each and all of the foregoing reasons, the MPPAA deprives CP & P of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

SEVENTH AFFIRMATIVE DEFENSE

15) The Trust is Taft-Hartley Trust Fund. As provided in 29 U.S.C. §186, the Trust is composed of an equal number of union and management trustees, each extensively safeguarding the rights of its respective constituents. Upon passage of E.R.I.S.A. 1974, the obligation of the trustees became clouded by an apparent conflicting obligation to pension plan beneficiaries. Indeed, recent Supreme Court pronouncements hold that the Trustees are Fiduciaries obligated to protecting the plan beneficiaries only. The confusion caused by these conflicting congressional enactments had left all parties unsure of their rights and obligations. The MPPAA does not take account of this confusion, which made it impossible for CP & P to take defensive measures to lessen any unfunded liability to the Trust. The MPPAA gives CART BLANCHE authority to parties over whom CP & P has no control to seize CP & P's assets on demand in satisfaction of a liability CP & P had no hand in creating. For each of the foregoing reasons, the MPPAA deprived CP & P of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

EIGHTH AFFIRMATIVE DEFENSE

16) E.R.I.S.A. provides that pension plans are either "defined benefit plans" or "defined contribution plan". The MPPAA arbitrarily assumes that a Multi-Employer Pension Plan in the construction industry, like the instant pension plan, are necessarily defined benefit pension plan which promises a certain level of benefits to participants. The instant pension plan expressly disclaims any promise of a particular level of benefits and beneficiaries are well aware of this. Although Congress may have had the authority to declare that the pension plans are a defined benefit plan for such limited purposes as having the Pension Benefit Guarantee Corporation assess such plan a nominal premium in order to finance insurance protection for the benefits of pension plan beneficiaries. It is patently irrational and arbitrary for congress to provide in MPPAA that multi-employer pension plans are necessarily defined benefit plans for the purposes of withdrawal liability. For each and all of the foregoing reasons, the MPPAA deprived CP & P of its property without due process of law in violation of the Fifth Amendment of the Constitution of the United States. Furthermore, the plan involved herein expressly held itself out as a defined contribution plan with no promise of any benefit level and is thus estopped from now claiming that it is a defined benefit plan and entitled to receive and procure unfunded vested liabilities.

NINTH AFFIRMATIVE DEFENSE

17) The MPPAA is arbitrary and capricious in holding employers, like CP & P, responsible for the unfunded

liability of pension plans. Employers, like CP & P, have no control over the adminstration of Multi-Employer Pension Plan, the setting of benefit levels, investment decisions, etc. To the extent that there is a likelihood that CP & P's withdrawal creates any possibility that "promised" benefits will not be adequately funded, the MPPAA arbitrarily and capriciously holds only employers like CP & P responsible. The MPPAA thereby discriminates against such employers in as much as such employers are the least responsible for any unfunded vested liability of the Trust. Rather, the cause of the problem lies primarily with the beneficiaries themselves, who, by demanding and receiving higher wage rates, have made union labor increasably uncompetitive, and with the Trustees over whom employers, like CP & P, have no control whatsoever and who have set excessively high target benefit levels without providing for a corresponding increase in contribution revenues sufficient to satisfy vested benefits for planned beneficiaries.

TENTH AFFIRMATIVE DEFENSE

18) By its letter of March 2, 1982, CP & P requested of the Trust certain information in accordance with its rights under §4219(b)(2)(a) of E.R.I.S.A., as amended. As of this time, the Trust has failed to respond to whose such request for information as it is required of it under §4219(b)(2)(B) of E.R.I.S.A., as amended. For this reason, the Trust is estopped from asserting any unfunded withdrawal liability in this action.

ELEVENTH AFFIRMATIVE DEFENSE

19) The complaint fails to state facts upon which relief can be granted.

WHEREFORE, CP & P prays for relief as follows:

1. that this court assume jurisdiction of this complaint and CP & P's consolidated complaint for declaratory and injunctive relief;

2. that this court enjoin the Trust and its Trustees, agents, employees, attorneys, representatives and/or successors from taking any action whatsoever described by §§4219 and 4221 of E.R.I.S.A., as amended, [29 U.S.C. §§1399 and 1401] to prosecute and force or collect its withdrawal liability claim or to penalize CP & P for non-compliance with the Trust's demand for payment hereof;

3. to enter a declaratory judgment that:

a) CP & P ceased all covered operations before the retroactive effective date of MPPAA and thus completely withdrew from the Trust as that term was later defined in MPPAA so that CP & P is not covered by MPPAA and thus has no withdrawal liability and no duty to arbitrate;

b) §4219 of MPPAA, 29 U.S.C. §1399 is unconstitutional and void insofar as it infringes the right to due process of law guaranteed by the Fifth Amendment as alleged in the affirmative defenses and in the consolidated complaint of CP & P;

c) that §4221 of E.R.I.S.A., as amended, [29 U.S.C. §1401] is unconstitutional and void insofar as it infringes the right to access to the court and due process of law guaranteed by the Fifth

Amendment, and the right to a jury trial guaranteed by the Seventh Amendment, as alleged in the affirmative defenses herein and CP & P's consolidated complaint herein;

d) Section 4201(a) of the MPPAA [29 U.S.C. §1381(a)] is unconstitutional and void as it infringes the right to due process of law guaranteed by the Fifth Amendment, as alleged in the affirmative defenses herein, and the consolidated complaint of CP & P herein;

e) Section 4201(a) of E.R.I.S.A., as amended, [29 U.S.C. §1381(a)] is unconstitutional insofar as it infringes the right to due process of law as alleged in the affirmative defenses herein and in the consolidated complaint herein;

4. that Plaintiff take nothing by its complaint on file herein;

5. that CP & P recover under its consolidated complaint on file herein:

6. grant CP & P its costs and disbursements herein;

7. grant CP & P its attorney's fees under §29 U.S.C. §§1451(a)(1) and 1451(e); and

8. grant CP & P such other and further relief as the Court may deem appropriate.

DATED: December (illegible), 1982.

DIEPENBROCK, WULFF, PLANT
& HANNEGAN

BY: /s/ Dennis R. Murphy
DENNIS R. MURPHY
Attorneys for Defendant,
CONCRETE PIPE &
PRODUCTS CO.

(Certificate of Service omitted in printing)

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Attorneys for CONSTRUCTION LABORERS
PENSION TRUST FOR SOUTHERN CALIFORNIA

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Plaintiff, vs. CEN-VI-RO CONCRETE PIPE & PRODUCTS, INC., Defendant.	Case No. 82-5184-MML (Consolidated under low number rule with)
CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, Plaintiff,	Case No. 83-132-MML STIPULATION OF FACTS ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

vs.) Date: March 19, 1984
) Time: 10:00 a.m.
CONSTRUCTION LABORERS) Courtroom: 12
PENSION TRUST FOR)
SOUTHERN CALIFORNIA,)
) (Lodged Feb. 15, 1984)
Defendant.)
)

All parties to these consolidated actions stipulate that there is no genuine issue of material fact with respect to the following:

1. Concrete Pipe and Products Co., Inc., of California is a California corporation doing business within the Central District of California.

2. The CLPT is an express trust organized under the Labor Management Relations Act of 1947. The CLPT is a multi-employer benefit plan within the meaning of the MPPAA.

3. On and before November 30, 1976, a plant for the manufacture of concrete pipe located at Shafter, California, was owned by Cen-Vi-Ro Concrete Pipe and Products Company ("Cen-Vi-Ro"). As of December 1, 1976, this plant became owned by CP&P and has been owned by it at all times since that date.

4. CP&P is a manufacturer of concrete pipe. CP&P engaged in the manufacture of concrete pipe at the Shafter plant. Its products were then sold and subsequently installed by the employees of other employers at construction sites. The manufacturing of concrete pipe by CP&P always took place at the plant and such manufacture was not conducted in connection with or at the site where the concrete pipe was to be used in construction.

The primary industrial functions of the Shafter plant involved the manufacturing of concrete pipe, the yard storage of completed pipe, and the loading of pipe onto trucks for shipment.

5. The Shafter plant is located on approximately forty acres of property on the corner of San Diego and Beech Streets in Shafter, California. The buildings on the property include an office building, steam tunnel, storage building, maintenance building, two cage buildings, and a machine building.

6. The CLPT is an express trust formed under a trust agreement entered into among the Southern California District Council of Laborers ("Union") and several multi-employer associations. CLPT primarily covers employees in the building and construction industry. The CLPT is managed by a board of trustees. Half of the trustees are selected by the Union and the other half are selected by the multi-employer associations.

7. CLPT derives revenues from employer contributions made by employers bound to collective bargaining agreements with the Union. These collective bargaining agreements require signatory employers to make contributions to the CLPT for each hour worked by employees within the bargaining units covered by the collective bargaining agreements involved.

8. Cen-Vi-Ro and the Union (as well as the affiliated Local 220 located in Bakersfield) were signatories to such a collective bargaining agreement as described above prior to November 30, 1976, covering the terms and conditions of work (including CLPT coverage) of employees represented by Local 220 at the Shafter plant.

9. On December 1, 1976, and thereafter, CP&P honored the terms of the collective bargaining agreement between Cen-Vi-Ro and the Union (and Local 220) which expired in 1978. On November 27, 1978, the Shafter Plant of CP&P entered into a new collective bargaining agreement with the Union (and Local 220) which likewise provided for contributions to CLPT for each hour worked by employees within the bargaining unit covered by the collective bargaining agreement. This agreement contained the following clause regarding termination:

> "This Agreement shall remain in full force and effect until June 30, 1981, and then thereafter from year to year until either party hereto shall give notice in writing to the other party of a desire to change, modify or terminate this Agreement.
>
> "Such written notice shall be given at least sixty (60) days prior to June 30, 1981, or June 30th of each year thereafter. If no agreement is reached by June 30, 1981, or June 30th of any year thereafter, the Employer or the Unions may thereafter give written notice to the other that on a specified date not less than fifteen (15) days after the date of said notice, the Agreement shall be considered terminated."

10. Pursuant to the trust fund contribution provisions of the agreement CP&P signed on November 27, 1978, and the trust fund contribution provisions of the agreement between Cen-Vi-Ro and the Union (and Local 220) that CP&P had honored since December 1, 1976, CP&P paid into CLPT a total of $102,656.68.

11. On April 23, 1981, the Union sent an approriate [sic] notice of reopening the collective bargaining

agreement for negotiations. On May 1, 1981, CP&P sent timely notice of its desire to reopen the collective bargaining agreement for negotiations. (A copy is attached as Exhibit "A".)

12. The Union responded with a letter dated May 12, 1981. (A copy is attached as Exhibit "B".)

13. No negotiations were conducted until October of 1981. Negotiation sessions were then held in both October and November 1981. The second such negotiation session, held in November 1981, resulted in an impasse between the parties. On November 30, 1981, counsel for CP&P wrote the Union. (A copy is attached as Exhibit "C".)

14. On August 17, 1979, CP&P ceased production at the Shafter Plant. This is reflected by the business records called "Operations Analysis" showing 347.30 tons of concrete pipe produced in August, 1979, as compared to 773.05 the previous month. This record shows zero production for the months of September, October, November, and December 1979, as well as for the months of January 1980 through October 1981.

15. In November 1981, the Shafter plant started production again. The Operations Analysis show that there were 10.58 tons of concrete pipe produced at the Shafter plant during that month.

16. In August 1979, CP&P ceased buying materials to make products at the Shafter plant, commenced laying off its employees at that facility, and started removing machinery from the premises, shipping the machinery to Sacramento for use in operations CP&P was engaged in at its plant in that city.

17. CP&P employees who were engaged in covered operations worked 1,781 3/4 hours in August 1979, 65 in September 1979, and 24 in October.

18. From October 1979 through October 1981, the only full-time employees who worked at the Shafter plant were Offie Harness, who worked full-time from October 1979 until December 31, 1980, and J.W. Hensley, who worked full-time from November 1979 through the reopening of the plant in November 1981.

19. Besides Harness and Hensley, the only other employees who worked at the Shafter plant from November 1979 through October 1981 were Haskel Ray and Jesse Plaza. Ray was a laborer who was recalled from layoff in May 1980 to work for 40.5 hours with a crew from the Sacramento facility in helping load a large piece of concrete pipe manufacturing equipment known as a "CVR" and component parts for shipment from the Shafter plant to the Jackson Road plant in Sacramento. The equipment was then shipped on May 9, 1980. Plaza was a maintenance man who worked 47 hours in January 1980.

20. For the hours worked by Ray in May 1980, CP&P contributed $48.60 to CLPT. This was the last contribution made by CP&P to the CLPT.

21. With the resumption of production in November 1981, the Shafter plant employed persons within the classification of laborers formerly covered by the scope of the 1978 to 1981 collective bargaining agreement between CP&P and the Union (and Local 220).

22. By letter of January 20, 1982, CLPT notified CP&P of its alleged withdrawal liability of $268,168.81

and demanded payment in accordance with a prescribed schedule. (A copy of the letter is attached as Exhibit "D".)

23. CP&P has not made any payment on the alleged withdrawal liability.

24. CP&P's financial statements for the fiscal years 1981 and 1982 and the six month balance sheet ending June 30, 1983 are attached as Exhibit "E", 1-3.

25. CLPT has not defaulted upon any loan or other obligation, nor has it failed to pay a pension benefit payment when such payment was legally due.

26. CLPT has not been financially incapable of paying any scheduled benefit to any of its beneficiaries.

27. CLPT has been informed by its independent actuary, the Martin E. Segal Company, Inc., that as of December 31, 1981, it had an aggregate unfunded vested liability of $532,621,400; as of December 31, 1980, it had an aggregate unfunded vested liability of $514,181,200; and as of December 31, 1979, it had an aggregate unfunded vested liability of $532,621,400 [sic]. (A copy of the actuary's January 1, 1982, report is attached as Exhibit "F".)

28. No shareholder, officer, director, agent, or representative of CP&P has, during the period from 1976 to the present date, had any participation in:

(a) the investment decisions pertaining to any assets of CLPT;

(b) the decisions of CLPT to adjust pension benefit levels;

(c) the decisions affecting CLPT's administrative costs; or

(d) the selection of actuarial assumptions or methods or accounting principles or methods upon which CP&P's asserted withdrawal liability has been calculated.

29. CLPT's decisions are made by its trustees. The employer-appointed trustees are selected by members of the multi-employer associations that are signatory to the Master Labor Agreement (being the Building Industry of California, Inc., the Engineering Contractors Association, and the Southern California Contractors Association, Inc.). At no time did CP&P choose to apply for membership in or belong to any of these multi-employer associations.

30. CP&P has never been denied membership in any of the above multi-employer associations.

31. The collective bargaining agreement which CP&P signed on November 27, 1978, did not guarantee or specify any certain pension benefit levels for pension beneficiaries.

32. Article IV, §§ 4.07 and 4.08 of the Declaration of Trust of the CLPT provides:

"Section 4.07. Neither the Association or (sic) any officer, agent, employee or (sic) committee member of the Associations shall be liable to make Contributions to the Fund or with respect to the Pension Plan, except to the extent that he or it may be an Individual Employer required to make Contributions to the Fund with respect to his or its own individual or joint venture operations, or to the extent he may incur liability as a Trustee as hereinafter provided. The liability of any Individual Employer

to the Fund, or with respect to the Pension Plan, shall be limited to the payments required by the Collective Bargaining Agreements with respect to his or its individual or joint venture operations, and in no event shall he or it be liable or responsible for any portion of the Contributions due from other Individual Employers with respect to the operations of such Individual Employers. The Individual Employers shall not be required to make any further payments or Contributions to the cost of operation of the Fund or of the Pension Plan, except as may be hereafter provided in the Collective Bargaining Agreements.

"Section 4.08. Neither the Associations, any Individual Employer, the Union, any Local Union, nor any Employee shall be liable or responsible for any debts, liabilities or obligations of the Fund or the Trustees."

33. Article X(E)(4)(b) of the Laborers' Craft Special Working Rules and Wage Scales which is Appendix K to the Southern California Master Labor Agreements provides:

"IMPORTANT.

PENSION BENEFITS ARE NOT AND HAVE NEVER BEEN GUARANTEED. THEY ARE PAYABLE ONLY TO THE EXTENT THAT THE FUND HAS ASSETS TO PAY BENEFITS. NEITHER YOUR EMPLOYER NOR YOUR UNION HAS ASSUMED ANY LIABILITY, DIRECTLY OR INDIRECTLY, TO PROVIDE MONTHLY PENSION BENEFITS. YOUR EMPLOYER'S

SOLE OBLIGATION IS TO MAKE THE CONTRIBUTIONS CALLED FOR IN ITS COLLECTIVE BARGAINING AGREEMENT. THE PENSION PLAN HAS ALSO BEEN CONSIDERED BY THE EMPLOYERS, THE UNION AND THE TRUSTEES TO BE A DEFINED CONTRIBUTION PLAN.

34. Article X, § E(4) of the 1977-1980 Master Labor Agreement provides:

> "The parties recognize and agree that the Pension Trust and Plan was created, negotiated, and is intended to continue to be if permitted by law under ERISA, a defined contribution plan and trust and that the individual Contractors' liability with regard to the pension has been and remains limited exclusively to payment of the contributions specified from time to time in collective bargaining agreements."

35. The CLPT is not a signatory to either of the agreements quoted from the immediately preceeding two paragraphs. The labor agreements are contracts between the Unions and the multi-employer associations.

36. All parties reserve their rights to argue the relevancy of any of the above agreed facts.

COX, CASTLE & NICHOLSON
James P. Watson
Everitt G. Beers

February 9, 1984

By: /s/ Everitt G. Beers
Everitt G. Beers,
Attorneys for the Construction Laborers Pension Trust for Southern California

DIEPENBROCK, WULFF, PLANT & HANNEGAN
Dennis R. Murphy
Edmund K. Brehl

February 14, 1984

By: /s/ Dennis R. Murphy
Dennis R. Murphy,
Attorneys for Concrete Pipe & Products Company, Inc., of California

(Certificate of Service omitted in printing)

Exhibit A

SOUTHERN CALIFORNIA DISTRICT COUNCIL
OF
LABORERS
AFFILIATED WITH
LAUDERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO
3540 WILSHIRE BOULEVARD, SUITE 910
LOS ANGELES, CALIFORNIA 90010
TELEPHONE 360-6720

[LOGO]
LOUIE BRAVO PRESIDENT
WILLIAM R. McCLAIN SECRETARY-TREASURER
RAY M. WILSON BUSINESS MANAGER

April 23, 1981

Cen-Vi-Ro Pipe Corporation
P.O. Box 1416
Shafter, California 93263

Gentlemen:

In accordance with the terms of Article XV of the collective bargaining agreement between your Corporation and

the International Union of Operating Engineers Local 12, the Southern California District Council of Laborers, Laborers International Union of North America Local #220, Teamsters, Chauffeurs, Warehousemen and Helpers Local 87, and the Kern, Inyo and Mono Counties Building and Construction Trades Council, notice is hereby given of the Union's desire to change, modify or terminate this agreement.

Failing to reach a satisfactory settlement within the terms of Article XV, we will be governed by the terms of said Article with respect to termination.

We are ready to meet on a date mutually convenient to all parties.

Very truly yours,

SOUTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS

/s/ Louie Bravo Pres.

/s/ _____ Sec'y

/s/ Ray M. Wilson Bus. Mgr.

LAW OFFICES

DIEPENBROCK, WULFF, PLANT & HANNEGAN

455 CAPITOL MALL

SACRAMENTO, CALIFORNIA 95814

(916) 444-3910

May 1, 1981

Subject: Concrete Pipe & Products Co., Inc.

Laborers' International Union
of North America
Local Union No. 220
2201 "H" Street
Bakersfield, Ca

Gentlemen:

By certified letter of April 15, 1981, the International Union of Operating Engineers, Local 12 gave to Concrete Pipe & Products Co., Inc. formal notice of its desire to reopen the existing collective bargaining agreement between Concrete Pipe and itself covering Concrete Pipe's plant at Shafter, California. The letter did not specify whether the Laborers' Local No. 220 was joining in the notice.

Concrete Pipe & Products Co., Inc. assumes that the Laborers' Local No. 220 was, in fact, joining in the notice. If this is not a correct assumption, then Concrete Pipe & Products Co., Inc. desires that negotiations be reopened as to all of the unions.

As you are probably aware, the plant of Concrete Pipe and Products Co., Inc. in Shafter, California has been

shut down for over one year. There are no current employees and no current plans to reopen the plant. Nonetheless, if you feel that there is some reason for meeting at this time with respect to the renewal of this contract which is soon to expire, please contact me so that we can discuss the formalities of the negotiations, the pertinent issues and arrange a date for negotiations.

Very truly yours,

/s/ Dennis R. Murphy
DENNIS R. MURPHY

cc: Concrete Pipe & Products Co., Inc.

CERTIFIED/RETURN RECEIPT REQUESTED

EXHIBIT B

SOUTHERN CALIFORNIA DISTRICT COUNCIL

OF

LABORERS

AFFILIATED WITH
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO
3540 WILSHIRE BOULEVARD, SUITE 910
LOS ANGELES, CALIFORNIA 90010
TELEPHONE 360-6720

[LOGO]
LOUIE BRAVO PRESIDENT
WILLIAM R. McCLAIN SECRETARY-TREASURER
RAY M. WILSON BUSINESS MANAGER

May 12, 1981

Mr. Dennis R. Murphy
Diepenbrock, Wulff, Plant &
Hannegan
455 Capitol Mall
Sacramento, Ca 95814

Re: File No. 14131/15c
Concrete Pipe & Products Co., Inc.

Dear Mr. Murphy:

Thank you for your letter of May 1, 1981 addressed to our affiliate Local No. 220, Bakersfield.

We assume from your letter that it was dictated before you received from your client the notice of reopening sent to your client by the Southern California District Council of Laborers on its own behalf and on behalf of its affiliated Local No. 220. We are enclosing a copy of that letter together with a copy of the signed return receipt for your records.

While we are aware that the company is not presently operating, we do feel that there is a need to negotiate right of recall of laid-off employees and the terms and conditions governing laid-off employees. For these reasons we feel that negotiation would be appropriate.

Very truly yours,
/s/ Ray M. Wilson
RAY M. WILSON
Business Manager

RMW:bg
cc: Local 220
Oper. Engineers Local 12

EXHIBIT C

LAW OFFICES

DIEPENBROCK, WULFF, PLANT & HANNEGAN

455 CAPITOL MALL

SACRAMENTO, CALIFORNIA 95814

(916) 444-3910

November 30, 1981

Subject: Concrete Pipe & Products Co., Inc.

Frank L. Todd
International Union of
Operating Engineers,
Local 12
3055 Wilshire Blvd.,
Third Floor
Los Angeles, California
90010

Johhn Wiley
Laborers' Union
Local 220
2201 "H" Street
Bakersfield, California

Don L. Frazier
General Teamsters & Food
Processing, Local
Union 87
3724 Pierce Road
Bakersfield, California
93308

Gentlemen:

During recent negotiations, Concrete Pipe & Products Company has attempted to reach agreement with you concerning the commencement of operations at its Shafter Plant. For over two years, Concrete Pipe & Products has not operated this plant and it has not employed any

employees within the jurisdiction of your unions. Furthermore, the former Collective Bargaining Agreement has expired. Nonetheless, Concrete Pipe & Products met to negotiate a new contract.

Since the commencement of operation to the plant, Concrete Pipe & Products has hired seven (7) employees, none of which have previously indicated their desire to be recognized by any of your unions. Thus, at the current time, Concrete Pipe & Products has no basis in which to continue recognition of your unions as representative of its employees and must withdraw any such recognition. If this situation should change, Concrete Pipe & Products will so advise you.

Very truly yours,

DIEPENBROCK, WULFF, PLANT
& HANNEGAN

BY /s/ Dennis R. Murphy
DENNIS R. MURPHY

cc: Bill Street
Concrete Pipe & Products

EXHIBIT D

COLLECTION OFFICE

THE CONSTRUCTION LABORERS' PENSION TRUST

FOR SOUTHERN CALIFORNIA

3540 WILSHIRE BOULEVARD, SUITE 512 •
LOS ANGELES, CALIFORNIA 90010

TELEPHONE (213) 383-3151

January 20, 1982 (logo)

CEN-VI-RO Concrete Pipe Products Co., Inc.
P. O. Box 103
Lockeford, California 95237

Gentlemen:

Our records indicate that you have not contributed to the Construction Laborers Pension Trust Fund ("Plan") since February 1981. We are further advised that you have not signed a renewal of a collective bargaining agreement obligating you to continue contributions to the Plan on behalf of the Construction laborers currently in your employ.

Based on this information, we conclude that you have chosen to withdraw from the Plan. Accordingly, you are subject to the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980, a federal enactment amending the Employee Retirement Income Security Act of 1974 ("ERISA").

This statute, as you probably know, provides that when an employer withdraws from participation in a multiemployer pension plan, the withdrawing employer is obligated to the Plan for a portion of the Plan's unfunded vested benefit liabilities as of the end of the Plan year immediately preceding the date of the employer's withdrawal.

Pursuant to the provisions of this 1980 statute and to the implementing regulations promulgated by the Pension Benefit Guaranty Corporation, the Board of Trustees of the Plan have adopted certain methods of calculating the

withdrawal liabilities applicable to you. These calculations are summarized on the attached form. They indicate that your withdrawal liability amounts to $268,168.81.

If, as anticipated by the Plan, the Pension Benefit Guaranty Corporation issues regulations on the assumptions which may be used to calculate withdrawal liability and these assumptions authorize the Plan to assess a withdrawal liability amount which is greater than that set forth in the preceding sentence, then the Plan will deem the withdrawal liability owed by you to be the greater amount.

You may pay the withdrawal liability set forth in the preceding paragraph in a single lump sum payable within 60 days after your receipt of this letter.

Should you decline to so pay, ERISA, as amended by the Multiemployer Pension Plan Amendments Act of 1980, provides a method for calculating periodic installment payments by which you may satisfy your withdrawal liability arising under the statute. Using this method, we have determined that your withdrawal liability may be satisfied by 132 monthly payments in the amount of $2,821.80, and a final monthly payment of $2,226.74.

You are expressly obligated under Federal Law to commence your monthly payments on March 22, 1982.

Thereafter, your monthly payments are due on the same date of each succeeding month.

The number of months over which your payments are due will increase correspondingly with any withdrawal liability increase resulting from issuance of the Pension Benefits Guaranty Corporation regulations mentioned

above. Additionally, the amount of your final and other monthly payments may vary as a result of future regulations; and your obligation may be subject to such additional steps as the Board of Trustees may require in accordance with the law.

Should you fail to make your first monthly payment by its due date, or should you fail to make any subsequent monthly payments when due, ERISA, as amended, provides that you will incur interest charges from the date your payment becomes due until the date payment is finally received. Additionally, you may incur liability for liquidated damages and other sums assessed under the deliquency provisions of the Plans' Trust Agreement. The rate of interest at which you will be assessed is that rate equal to the per annum rate of interest established by the Federal Reserve Board of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act prevailing on the 25th day of the month preceding the date on which your payment became due plus five (5) percent. This rate of interest is subject to change if the Pension Benefit Guaranty Corporation issues regulations providing a different rate of interest.

More importantly, should you fail to pay any monthly payment plus interest within 60 days after receiving written notice from the Plan that such payment is delinquent, or should you commit any other act which the Plan has deemed to constitute a "default" in your payment obligations, ERISA, as amended, provides that the Board of Trustees may deem you to be in default and thereby liable for immediate payment of the outstanding amount of your withdrawal liability plus accrued interest on your

total outstanding liability from the due date of the first payment which was not timely made.

This letter is intended to provide you with notice of your liability and payment obligations and of the existence of ERISA, as amended, and of some of its provisions. This letter is not intended as an explanation of the statute, nor shall it be construed as limiting in any way the rights of the Plan under the statute.

Very truly yours,

DAN O'CONNELL
Auditor

DO:am

cc: Southern California District Council of Laborers
CERTIFIED MAIL - RETURN RECEIPT

WORKSHEET FOR ESTIMATING WITHDRAWAL LIABILITY FROM THE SOUTHERN CALIFORNIA LABORERS PENSION TRUST DURING YEAR ENDED DECEMBER 31, 1981

1. What were your company's contributions to the Pension Fund during the five years ending:

a.	December 31, 1979	$ 146,699.67
b.	December 31, 1980	$ 118,520.96

2. The aggregate Pension Fund contributions on behalf of continuing employers during these five years were as follows:

a.	December 31, 1979	$ 273,549,700
b.	December 31, 1980	$ 320,467,000

3. Percent of total Pension Fund contributions for which you were obligated:

a.	Divide 1a by 2a	.000536282
b.	Divide 1b by 2b	.000369838

4. The Pension Fund's aggregate unfunded vested liability pools as of December 31, 1980 are as follows:

a.	Pool as of December 31, 1979	$ 468,656,500
b.	Pool as of December 31, 1980	$ 45,524,700

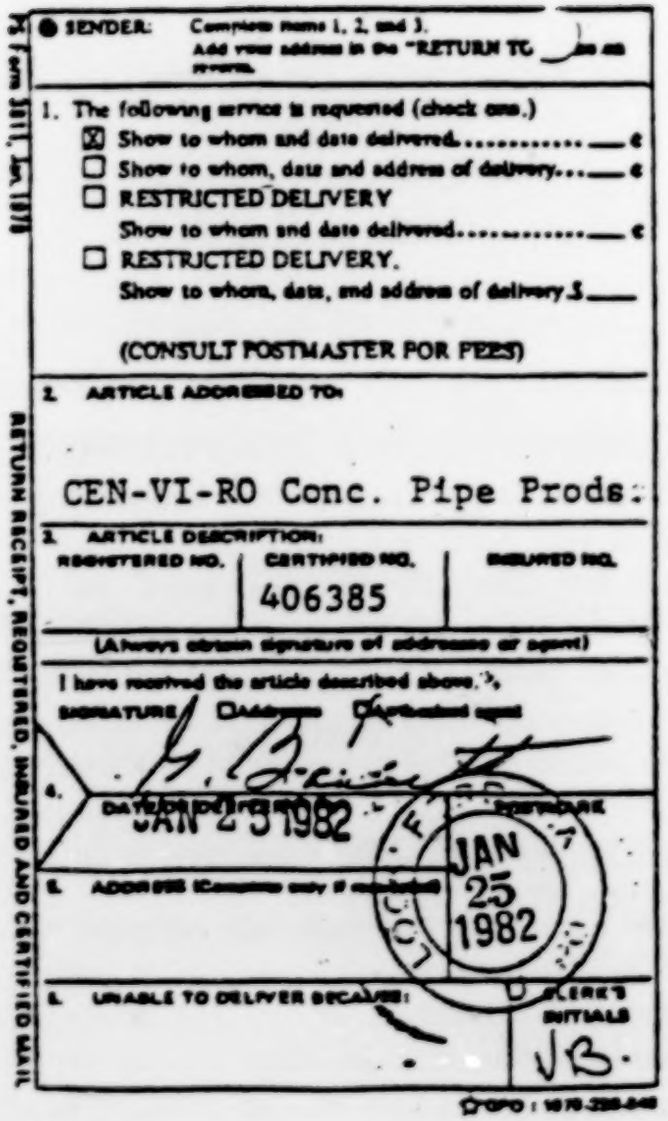
5. Your estimated withdrawal assessment before the offset is determined as follows:

a.	Line 3a multiplied by line 4a	$ 251,332.05
b.	Line 3b multiplied by line 4b	$ 16,836.76
c.	Total of a and b	$ 268,168.81

6. Offset amount: $ -0-

- If line 5c is less than $100,000, then the offset amount equals $50,000.
- If line 5c is greater than $150,000, then the offset amount equals $0.
- If line 5c exceeds $100,000 but is less than $150,000, then the offset amount equals $50,000 minus the amount by which line 5c exceeds $100,000; for example, if line 5c equals $130,000, then the offset amount equals $20,000.

7. Your estimated withdrawal assessment equals line 5c less line 6: $ 268,168.81



BEST AVAILABLE COPY

EXHIBIT E-1

CONCRETE PIPE & PRODUCTS CO., INC.
OF CALIFORNIA

FINANCIAL REPORT

December 31, 1981

OFFICERS

Stanley R. Navas, President

William H. Street, III, Executive Vice-President

Raymond E. Miles, Secretary-Treasurer

Benjamin M. Ehrhardt, Assistant Secretary-Treasurer

DIRECTORS

Stanley R. Navas — Albert M. Navas

Raymond E. Miles — William H. Street, III

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MITCHELL, WIGGINS & COMPANY

CERTIFIED PUBLIC ACCOUNTANTS
411 ROSS BUILDING
P.O. BOX 1580
RICHMOND, VIRGINIA 23213
648-7211 AREA CODE 804

The Officers and Directors
Concrete Pipe & Products
Co., Inc. of California
Lockeford, California

We have examined the accompanying Balance Sheet of Concrete Pipe & Products Co., Inc. of California, a wholly owned subsidiary of Concrete Pipe & Products Company, Inc., as of December 31, 1981, and the related Statements of Income, Retained Earnings and Changes in Financial Position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements mentioned above present fairly the financial position of Concrete Pipe & Products Co., Inc. of California at December 31, 1981, and the results of its operations and the changes in its financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

/s/ Mitchell, Wiggins &
Company
Certified Public Accountants

February 22, 1982

FINANCIAL STATEMENTS

BALANCE SHEET

December 31, 1981

ASSETS

CURRENT ASSETS			
Cash on hand and on deposit			$ 88,357.40
Accounts receivable:			
Trade	$ 477,856.62		
Navas Pipe Supply Company (Note 3)	44,426.07		
Employees and other	11,752.94		534,035.63
Inventories:			
Finished products	$1,279,615.67		
Work in process	110,112.67		
Raw materials	650,827.44		
Factory supplies	11,363.54		2,051,919.32
Prepaid expenses			19,310.50
TOTAL CURRENT ASSETS			$2,693,622.85

DEPOSITS				
Miscellaneous deposits				10,000.00
PROPERTY AND EQUIPMENT	**COST**	**ACCUMULATED DEPRECIATION**	**NET**	
Land	$ 181,752.78	$ –	$ 181,752.78	
Buildings	313,236.61	121,916.19	191,320.42	
Machinery and equipment	3,268,502.07	2,253,808.63	1,014,693.44	
Automobiles and trucks	115,080.69	48,212.32	66,868.37	
Office furniture and fixtures	64,505.36	40,466.24	24,039.12	
Leasehold improvements	$ 13,653.02	$ 13,653.02	–	
	$3,956,730.53	$2,478,056.40	$1,478,674.13	1,478,674.13
INTANGIBLES (Net of amortization)				
Goodwill			$ 59,731.96	
Patents			1,952.88	61,684.84
				$4,243,981.82

The Notes to Financial Statements are an integral part of this statement.

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES		
Accounts payable:		
Trade	$ 270,209.35	
CVR-CP&P/Hydro Conduit Joint Venture (Note 2)	64,116.96	
Concrete Pipe & Products Company, Inc., Parent (Note 3)	2,727,492.42	$3,061,818.73
Payroll taxes and deductions		7,249.61
Accrued pension plan contribution (Note 5)		56,698.00
Sales tax payable		14,220.91
Accrued salaries and wages		13,206.50
Accrued workmen's compensation insurance		51,786.70
Other items accrued or payable		7,750.35
TOTAL CURRENT LIABILITIES		$3,212,730.80

DEFERRED LIABILITIES		
Excess distribution from joint venture (Note 2)		48,186.45
STOCKHOLDER'S EQUITY		
Common stock – Par value $1.00 per share; Authorized 5,000,000 shares; Issued and outstanding 300,000 shares	$ 300,000.00	
Retained earnings	683,064.57	983,064.57
		$4,243,981.82

STATEMENT OF INCOME

Year Ended December 31, 1981

GROSS SALES		
Concrete pipe and products		$5,631,213.48
Freight charges		403,228.82
Shop		545,411.92
TOTAL		$6,579,854.22
Deduct – Delivery costs		467,699.72
NET SALES		$6,112,154.50
COST OF PRODUCTS SOLD		6,180,040.62
GROSS LOSS ON SALES		$ 67,886.12
OPERATING EXPENSES		
Administrative	$297,728.06	
Selling	288,012.31	
Engineering	128,561.66	714,302.03
LOSS FROM OPERATIONS		$ 782,188.15
OTHER INCOME		
Gain on disposal of property and equipment	$ 999.21	
Discounts earned	13,563.26	
Royalties	25,681.76	
Miscellaneous	103,512.13	143,756.36
TOTAL		$ 638,431.79
OTHER DEDUCTION		
Loss from joint venture		14,209.44
LOSS BEFORE INCOME TAXES		$ 652,641.23
PROVISION FOR INCOME TAXES (Note 4)		
Reduction of income tax based on California loss		48,428.41
NET LOSS		$ 604,212.82

The Notes to Financial Statements are an integral part of this statement.

STATEMENT OF RETAINED EARNINGS

Year Ended December 31, 1981

BALANCE - January 1, 1981	$1,287,277.39
Deduct - Net loss	604,212.82
BALANCE - December 31, 1981	$ 683,064.57

The Notes to Financial Statements are an integral part of this statement.

STATEMENT OF CHANGES IN FINANCIAL POSITION

Year Ended December 31, 1981

FINANCIAL RESOURCES PROVIDED BY	
Operations:	
Net Loss	~$ 604,212.82
Items which did not (provide) or require outlay of working capital during the year:	
Depreciation	643,158.73
Amortization	9,778.13
Gain on disposal of property and equipment	(999.21)
Loss from joint venture	14,209.44
WORKING CAPITAL PROVIDED BY OPERATIONS	$ 61,934.27
Proceeds from disposal of property and equipment	5,100.00
Distributions from joint venture	45,000.00
TOTAL FINANCIAL RESOURCES PROVIDED	$ 112,034.27

FINANCIAL RESOURCES APPLIED TO	
Acquisition of property and equipment:	
Machinery and equipment	$ 20,466.97
Automobiles and trucks	30,119.49
Office furniture and fixtures	2,175.69
TOTAL FINANCIAL RESOURCES APPLIED	$ 52,762.15
INCREASE IN WORKING CAPITAL	$ 59,272.12
SUMMARY OF CHANGES IN WORKING CAPITAL COMPONENTS	
Increase (decrease) in current assets:	
Cash	$ (71,877.02)
Accounts receivable	(282,306.30)
Inventories	72,588.79
Prepaid expenses	5,916.15
	$(275,678.38)

Increase (decrease) in current liabilities:	
Accounts payable	$(362,749.66)
Accrued salaries and wages	6,448.40
Sales tax payable	5,079.16
Accrued workmen's compensation insurance	9,229.14
Accrued pension plan contribution	12,502.00
Other items accrued or payable	(5,459.54)
	$(334,950.50)
INCREASE IN WORKING CAPITAL	$ 59,272.12

The Notes to Financial Statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTS

December 31, 1981

Note 1. Summary of Significant Accounting Policies

The Company uses the direct charge-off method of accounting for bad debts. At the end of the year, the receivables are reviewed and all of the accounts which are considered uncollectible are charged off to expense.

Inventories are generally stated at the lower of cost (first-in first-out method) or market. Market is considered as the net realizable value.

Property and equipment are carried at cost. Major additions and betterments are charged to property accounts while replacements, maintenance, and repairs which do not improve or extend the life of the respective assets are expensed currently. Property and equipment purchased after December 31, 1980, are depreciated using the Accelerated Cost Recovery System as described in the Economic Tax Recovery Act of 1981. For property and equipment purchased prior to January 1, 1981, depreciation is computed using accelerated methods for substantially all new assets, while depreciation is computed using the straight-line method for used assets. These depreciation methods are used for both financial reporting and income tax purposes.

The investment in the joint venture is being accounted for by the equity method. Under the equity method the investment is carried at cost adjusted for the Company's share of the net income or loss of the investee subsequent to acquisition.

Goodwill is being amortized over fifteen years by the straight-line method. Patents are being amortized over their respective remaining lives.

Note 2. Excess Distribution from Joint Venture

Concrete Pipe & Products Co., Inc. of California has a 60% interest in a joint venture doing business under the name of CVR-CP&P/Hydro Conduit. This joint venture was formed to produce so much of the concrete pipe required by the Sacramento Regional County Sanitation District as the joint venture was the successful bidder. As of December 31, 1981, the joint venture had produced and delivered all of the pipe required for the project. However, the joint venture remains in existence pending settlement of certain legal matters.

As mentioned in Note 1, the joint venture has been accounted for on the equity method. The changes in the investment account are summarized below:

Balance – January 1, 1981			$11,022.99
Deduct:	Withdrawals	$45,000.00	
	Share of loss	14,209.44	59,209.44
Balance – December 31, 1981 (Deficit)			$(48,186.45)

Note 2. Excess Distribution from Joint Venture (Continued)

RESULTS OF OPERATIONS

Income	$ 1,039.65
Costs and operating expenses	24,722.05
NET LOSS	$23,682.40

Distribution of net loss:

Concrete Pipe & Products Co., Inc. of California	$14,209.44
Hydro Conduit Corporation	9,472.96
TOTAL	$23,682.40

At December 31, 1981, Concrete Pipe had a receivable from the joint venture of $8,128.07 and a payable to the joint venture of $64,116.96.

Note 3. Related Parties and Related Party Transactions

The Company was a wholly owned subsidiary of Concrete Pipe and Products Company, Inc., until March 2, 1981, at which time, Stanley R. Navas purchased 51% interest in the Company. On December 31, 1981, this interest was repurchased by Concrete Pipe & Products Company, Inc.

The parent company from time to time made noninterest bearing advances to the Corporation which amounted to $2,727,492.42 at December 31, 1981. The Company's parent also owns a 49% interest in Navas Pipe Supply Company. During the year, Company sales to Navas Pipe Supply Company were $2,846,680.89. Accounts receivable from Navas Pipe Supply at December 31, 1981, amounted to $44,426.07 and accounts payable amounted to $2,016.00. In addition, the Company received $79,350.92 for administrative and other services furnished to Navas Pipe Supply.

Note 4. Income Taxes

The Company's operations for the two months ended February 28, 1981, are included in the consolidated Federal income tax return with its parent, Concrete Pipe & Products Company,

Inc. The amount of Federal income tax reduction allocated to the Company was based on the Company's net loss and tax credits for this two-month period. Operations for the ten months ended December 31, 1981, are reported on a separate Federal income tax return. The net loss of $542,277.68 and unused investment credit of $2,819.30 reported on this return will be carried forward and offset against this Company's future Federal taxable income and tax liabilities, respectively. Both the net loss and unused credit expire in 1996.

At the date of this report, consolidated Federal income tax returns through 1979 have been examined by the Internal Revenue Service and all know [sic] adjustments have been recorded.

Note 5. Pension Plan

Concrete Pipe & Products Company, Inc., and its subsidiaries have adopted an employee retirement plan covering substantially all of their employees. The plan was effective for the parent Company and Southern Brick & Supply Co., Incorporated, as of January 1, 1970, for Concrete Pipe & Products Co., Inc. of Manassas December 6, 1973, and for this Company January 1, 1977. The Company's policy is to fund the total of (a) currently accruing pension costs and (b) an amount equal to the amortization of past service costs over periods not exceeding 30 years. The total contribution to the pension plan for 1981 was $574,981.00 with this Company's share amounting to $56,698.00. The accumulated plan benefits and plan net assets as of January 1, 1981, for the retirement plan of Concrete Pipe & Products Company, Inc., and subsidiaries are presented below:

Actuarial present value of accumulated plan benefits:

Vested	$1,488,477.00
Nonvested	241,266.00
	$1,729,743.00
Net assets available for benefits	$3,124,133.34

The assumed rate of return used in determining the actuarial present value of accumulated plan benefits was 9%.

Note 6. Leases and Lease Commitments

The Company leases land at its Shafter and Sacramento plants.

The lease at Shafter expires on September 30, 1982. Rentals are paid quarterly in advance and the Company is to reimburse the lessor for property taxes.

The Sacramento lease is for a ten-year period, which started in 1979, with an option to renew for two consecutive renewal terms of five years each. The annual rental is $8,400.00. The Company is to pay all property taxes and is to maintain public liability insurance on the leased property.

In 1980, the Company entered into a lease agreement with BT Leasing Services, Inc., for machinery and improvements. The lease will be for fifteen years with no option to purchase. In accordance with Financial Accounting Standards Board Statement No. 13 – Accounting for Leases, this lease will be classified as an operating lease. Under the terms of the lease agreement, the Company is responsible for maintaining the equipment in good operating condition. In addition, the Company is liable

for all taxes on the equipment and improvements as well as maintaining proper insurance coverage. The lessor has agreed to pass through all investment tax credit available on the equipment to the Company.

Note 6. Leases and Lease Commitments (Continued)

Minimum rental commitments under all noncancellable leases are as follows:

	REAL ESTATE	MACHINERY	TOTAL
1982	$ 102,157.56	$ 332,260.80	$ 434,418.36
1983	$ 102,157.56	$ 332,260.80	$ 434,418.36
1984	$ 102,157.56	$ 332,260.80	$ 434,418.36
1985	$ 102,157.56	$ 332,260.80	$ 434,418.36
1986	$ 102,157.56	$ 332,260.80	$ 434,418.36
There after	829,365.52	2,852,450.33	3,681,815.85
	$1,340,153.32	$4,513,754.33	$5,853,907.65

Total rental expense for 1981 was as follows:

Real estate	$114,823.64
Automobiles and trucks	4,640.39
Machinery and equipment	332,260.80
	$451,724.83

Note 7. Contingent Liabilities

The Company was defendant in several actions arising in the normal course of business. Management is of the opinion that either adequate provision has been made for any loss or that the Company has sufficient insurance coverage.

MITCHELL, WIGGINS & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
411 ROSS BUILDING
P.O. BOX 1580
RICHMOND, VIRGINIA 23213
648-7211 AREA CODE 804

The Officers and Directors
Concrete Pipe & Products
Co., Inc. of California
Lockeford, California

The accompanying additional financial information is presented for supplementary analysis purposes and is not considered necessary for a fair presentation of the basic financial statements. The supplementary financial information has been subjected to the applicable audit procedures we performed in our examination of the related basic financial statements.

In our opinion, the supplementary financial information is fairly stated in all material respects in relation to the financial statements taken as a whole.

/s/ Mitchell, Wiggins &
Company
Certified Public Accountants

February 22, 1982

SUPPLEMENTARY DATA

STATEMENT OF INCOME – BY PLANTS

Year Ended December 31, 1981

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	RECLASSI-FICATIONS AND ELIMINA-TIONS	TOTAL
GROSS SALES						
Concrete pipe and products	$ –	$ 32,726.13	$3,693,034.33	$1,503,340.93	$ –	$5,229,101.39
Freight charges	–	1,345.01	285,383.19	116,500.62	–	403,228.82
Shop	567,808.90	–	–	–	–	567,808.90
Interplant	447,945.08	–	–	–	(447,945.08)	–
Intercompany	379,715.11	–	–	–	–	379,715.11
TOTALS	$1,395,469.09	$ 34,071.14	$3,978,417.52	$1,619,841.55	$(447,945.08)	$6,579,854.22
Deduct – Delivery costs	–	3,072.72	329,907.86	134,719.14	–	467,699.72
NET SALES	$1,395,469.09	$ 30,998.42	$3,648,509.66	$1,485,122.41	$(447,945.08)	$6,112,154.50
COST OF PRODUCTS SOLD	1,395,561.39	214,237.16	3,552,402.95	1,465,784.20	(447,945.08)	6,180,040.62
GROSS PROFIT (LOSS) ON SALES	$ (92.30)	$(183,238.74)	$ 96,106.71	$ 19,338.21	$ –	$ (67,886.12
OPERATING EXPENSES						
Administrative	$ 73,999.21	$ 14,799.83	$ 103,980.18	$ 104,948.84	$ –	$ 297,728.06
Selling	50,775.12	29,909.93	133,836.93	73,490.33	–	288,012.31
Engineering	88,402.37	–	20,079.67	20,079.62	–	128,561.66
TOTAL	$ 213,176.70	$ 44,709.76	$ 257,896.78	$ 198,518.79	$ –	$ 714,302.03
LOSS FROM OPERATIONS	$ 213,269.00	$ 227,948.50	$ 161,790.07	$ 179,180.58	$ –	$ 782,188.15

STATEMENT OF INCOME - BY PLANTS

Year Ended December 31, 1981

(Continued)

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	RECLASSI-FICATIONS AND ELIMINA-TIONS	TOTAL
OTHER INCOME						
Gain on disposal of property and equipment	$ -	$ -	$ -	$ 999.21	$ -	$ 999.21
Discounts earned	318.97	-	11,119.12	2,125.17	$ -	13,563.26
Royalties	13,945.29	$ -	-	11,736.47	-	25,681.76
Miscellaneous	678.43	10,526.13	56,485.01	35,822.56	-	103,512.13
TOTAL OTHER INCOME	$ 14,942.69	$ 10,526.13	$ 67,604.13	$ 50,683.41	$ -	$ 143,756.36
LOSS BEFORE OTHER DEDUCTION	$ 198,326.31	$ 217,422.37	$ 94,185.94	$ 128,497.17	$ -	$ 638,431.79
OTHER DEDUCTION						
Loss from join venture	-	-	-	-	14,209.44	14,209.44
LOSS BEFORE INCOME TAXES	$ 198,326.31	$ 217,422.37	$ 94,185.94	$ 128,497.17	$ 14,209.44	$ 652,641.23
REDUCTION OF INCOME TAXES						48,428.41
NET LOSS						$ 604,212.82

COST OF PRODUCTS MANUFACTURED AND SOLD

Year Ended December 31, 1981

	LOCKEFORD	SHAFTER	SACRAMENTO	FLORIN	ELIMINATIONS AND ADJUSTMENTS	TOTAL
RAW MATERIALS USED						
Cement	$ –	$ 8,165.29	$ 560,288.95	$110,087.18	$ –	$ 678,541.42
Sand and gravel	–	2,888.58	305,199.58	53,833.17	–	361,921.33
Reinforcing bars and hot rods	–	23,975.28	543,426.51	132,824.04	–	700,225.83
Miscellaneous steel	–	2,543.17	5,953.95	75.83	–	8,572.95
Welding rods	11,690.51	–	4,163.30	248.50	–	16,102.31
Gaskets and materials	–	911.52	58,720.55	8,459.50	–	68,091.57
Miscellaneous materials	–	1,953.07	19,853.57	2,714.92	–	24,521.56
Shop materials	567,123.97	–	–	–	–	567,123.97
Purchased components	23,268.87	–	–	–	–	23,268.87
TOTALS	$ 602,083.35	$ 40,436.91	$1,497,606.41	$308,243.14	$ –	$2,448,369.81
LABOR	$ 453,649.86	$ 26,911.30	$ 888,323.68	$171,911.35	$ –	$1,540,796.19
MANUFACTURING EXPENSES						
Power	$ 36,673.00	$ 4,108.54	$ 18,046.00	$ 18,395.16	$ –	$ 77,222.70
Gas, oil and grease	8,872.07	5,248.22	40,613.07	23,481.75	–	78,215.11
Repairs and maintenance	23,324.89	754.82	–	11,122.45	–	35,202.16
Rent expense	12.60	12,650.21	298,311.65	136,126.36	–	447,100.82
Miscellaneous manufacturing expense	34,656.34	27,880.12	493,421.43	86,259.47	–	642,217.36
Payroll taxes	36,032.00	2,698.00	76,343.73	16,125.16	–	131,198.89
TOTALS	$ 139,570.90	$ 53,339.91	$ 926,735.88	$291,510.35	$ –	$1,411,157.04
MANUFACTURING COST FOR INVENTORY VALUATION	$1,195,304.11	$120,688.12	$3,312,665.97	$771,664.84	$ –	$5,400,323.04

COST OF PRODUCTS MANUFACTURED AND SOLD

(Continued)

	LOCKEFORD	SHAFTER	SACRAMENTO	FLORIN	ELIMINATIONS AND ADJUSTMENTS	TOTAL
FACTORY ADMINISTRATIVE EXPENSES						
Supervisory and factory office salaries	$ 46,846.80	$ 612.00	$ 72,230.29	$ 39,759.68	–	$ 159,448.77
Travel and auto expense	7,588.40	3,365.71	11,447.05	10,036.10	–	32,437.26
Taxes:						
Land and buildings	6,750.03	217.60	4,261.70	7,902.90	$ –	19,132.23
Machinery and equipment	1,178.43	14,797.71	23,831.37	23,396.61	–	63,204.12
Payroll	3,512.00	53.00	5,135.00	2,955.00	–	11,655.00
Depreciation:						
Factory buildings	13,301.17	–	2,641.40	6,734.53	–	22,677.10
Machinery and equipment	32,129.37	59,729.98	263,297.57	209,801.38	–	564,958.30
Autos and trucks	1,176.83	–	2,116.68	700.00	–	3,993.51
Furniture and equipment	1,608.30	423.50	1,347.40	3,811.32	–	7,190.52
Amortization of leasehold improvements	–	2,503.07	–	–	–	2,503.07
Insurance	47,089.62	3,216.32	108,051.58	9,444.03	–	167,801.55
Contribution to employees' pension plan	20,978.00	–	17,374.65	7,138.88	–	45,491.53
Miscellaneous manufacturing expense	14,244.88	10,437.30	24,457.27	30,785.51	–	79,924.96
Recovery of factory administrative expense	–	–	–	–	–	–
TOTALS	$ 196,403.83	$ 95,356.19	$ 536,191.96	$ 352,465.94	$ –	$1,180,417.92

COST OF PRODUCTS MANUFACTURED AND SOLD

(Continued)

	LOCKEFORD	SHAFTER	SACRAMENTO	FLORIN	ELIMINATIONS AND ADJUSTMENTS	TOTAL
TOTAL MANUFACTURING COST	$1,391,707.94	$216,044.31	$3,848,857.93	$1,124,130.78	$ –	$6,580,740.96
Add: Finish products inventory – January 1, 1981	55,462.19	27,079.47	522,848.66	563,176.94	–	1,168,567.26
Purchases for resale	–	–	2,016.00	–	–	2,016.00
Transfers from other divisions	–	112,614.59	24,961.36	18,701.20	(156,277.15)	–
TOTALS	$1,447,170.13	$355,738.37	$4,398,683.95	$1,706,008.92	$(156,277.15)	$7,751,324.22
Deduct: Finish products inventory – December 31, 1981	51,608.74	141,501.21	846,281.00	240,224.72	–	1,279,615.67
Products used in construction and repairs	–	–	–	–	(291,667.93)	291,667.93
COST OF PRODUCTS SOLD	$1,395,561.39	$214,237.16	$3,552,402.95	$1,465,784.20	$(447,945.08)	$6,180,040.62

SCHEDULE OF OPERATING EXPENSES

Year Ended December 31, 1981

	ADMINISTRATIVE	SELLING	ENGINEERING	TOTAL
Salaries	$152,423.84	$189,754.58	$ 98,640.19	$440,818.61
Travel and auto expense	17,346.79	35,081.90	2,944.64	55,373.33
Insurance	11,234.06	10,360.02	6,551.41	28,145.49
Telephone	3,884.93	–	–	3,884.93
Dues and subscription	1,060.70	–	–	1,060.70
Supplies	3,294.66	–	–	3,294.66
Depreciation: Office building	4,404.45	–	–	4,404.45
Automobiles	1,930.58	6,669.65	2,552.56	11,152.79
Furniture and equipment	9,175.66	–	–	9,175.66
Amortization: Goodwill	6,023.29	–	–	6,023.29
Organization expense	193.52	–	–	193.52
Patents	1,058.15	–	–	1,058.15
Postage	2,031.75	–	–	2,031.75
Data processing services	5,685.29	–	–	5,685.29
Repairs and maintenance	3,530.11	–	–	3,530.11
Rent and utilities	4,999.63	–	–	4,999.63
Contribution to employees' pension plan	7,370.00	10,206.00	4,536.00	22,112.00
Taxes and licenses	200.00	–	–	200.00
Payroll taxes	9,210.57	14,671.00	7,910.00	31,791.57
Miscellaneous	17,039.96	21,269.16	5,426.86	43,735.98
Professional fees	31,761.90	–	–	31,761.90
Contributions	878.00	–	–	878.00
Uncollectible accounts	2,990.22	–	–	2,990.22
	$297,728.06	$288,012.31	$128,561.66	$714,302.03

EXHIBIT E-2

CONCRETE PIPE & PRODUCTS CO., INC.,
OF CALIFORNIA

FINANCIAL REPORT

December 31, 1982

OFFICERS

Stanley R. Navas, President

William H. Street, III, Executive Vice-President

Raymond E. Miles, Secretary-Treasurer

Benjamin M. Ehrhardt, Assistant Secretary-Treasurer

DIRECTORS

Stanley R. Navas William H. Street, III

Raymond E. Miles

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MITCHELL, WIGGINS & COMPANY
CERTIFIED PUBLIC ACCOUNTS
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P.O. BOX 1580
RICHMOND, VIRGINIA 23213
648-7211 AREA CODE 804

The Officers and Directors
Concrete Pipe & Products
Co., Inc., of California
Lockeford, California

We have examined the accompanying Balance Sheet of Concrete Pipe & Products Co., Inc., of California, a wholly owned subsidiary of Concrete Pipe & Products Company, Inc., as of December 31, 1982, and the related Statements of Income, Retained Earnings and Changes in Financial Position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements mentioned above present fairly the financial position of Concrete Pipe & Products Co., Inc., of California at December 31, 1982, and the results of its operations and the changes in its financial position for the year then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

February 14, 1983 /s/ Mitchell, Wiggins
& Company
Certified Public Accountants

FINANCIAL STATEMENTS

BALANCE SHEET

December 31, 1982

ASSETS

CURRENT ASSETS		
Cash on hand and on deposit		$ 121,341.93
Accounts receivable:		
Trade	$975,675.71	
Navas Pipe Supply Company (Note 3)	2,987.75	
Employees and other	14,063.10	
		992,726.56
Inventories:		
Finished products	$797,535.38	
Work-in-process	27,910.62	
Raw materials	336,257.95	
Factory supplies	10,047.69	
		1,171,751.64
Prepaid expenses		21,756.60
TOTAL CURRENT ASSETS		$2,307,576.73

DEPOSITS				
Miscellaneous deposits				$ 10,275.00
PROPERTY AND EQUIPMENT	COST	ACCUMULATED DEPRECIATION	NET	
Land	$ 181,752.78	$ –	$ 181,752.78	
Buildings	405,851.61	147,320.67	258,530.94	
Machinery and equipment	3,394,564.39	2,700,250.27	694,314.12	
Automobiles and trucks	161,750.13	99,777.23	61,972.90	
Office furniture and fixtures	69,992.12	52,037.68	17,954.44	
Leasehold improvements	13,653.02	13,653.02	–	
	$4,227,564.05	$3,013,038.87	$1,214,525.18	1,214,525.18
INTANGIBLES (Net of amortization)				
Goodwill			$ 53,708.57	
Patents			1,592.44	55,301.01
				$3,587,677.92

The Notes to Financial Statements are an integral part of this statement.

LIABILITIES AND STOCKHOLDER'S EQUITY

CURRENT LIABILITIES		
Accounts payable:		
Trade	$ 118,180.63	
CVR-CP&P/Hydro Conduit – Joint venture (Note 2)	64,116.96	
Concrete Pipe & Products Company, Inc., Parent (Note 3)	2,815,594.24	$2,997,891.83
Payroll taxes deducted and accrued		3,232.18
Accrued pension plan contribution (Note 5)		45,543.00
Sales tax payable		13,460.16
Accrued salaries and wages		11,597.60
Accrued workmen's compensation insurance		40,838.00
Other items accrued or payable		7,427.56
TOTAL CURRENT LIABILITIES		$3,119,990.33

DEFERRED LIABILITIES		
Excess distribution from joint venture (Note 2)		50,031.01
STOCKHOLDER'S EQUITY		
Common stock – Par value $1.00 per share; Authorized 5,000,000 shares; Issued and outstanding 300,000 shares	$ 300,000.00	
Retained earnings	117,656.58	417,656.58
		$3,587,677.92

STATEMENT OF INCOME

Year Ended December 31, 1982

GROSS SALES		
Concrete pipe and products		$5,501,828.57
Freight charges		443,155.17
Shop		957,902.12
TOTAL		$6,902,885.86
Deduct – Delivery costs		580,508.55
NET SALES		$6,322,377.31
COST OF PRODUCTS SOLD		6,665,711.39
GROSS LOSS ON SALES		$ 343,334.08
OPERATING EXPENSES		
Administrative	$404,064.31	
Selling	278,866.27	
Engineering	114,983.14	797,913.72
LOSS FROM OPERATIONS		$1,141,247.80

OTHER INCOME		
Discounts earned	$ 10,944.32	
Royalties	23,476.46	
Miscellaneous	37,177.41	71,598.19
TOTAL		$1,069,649.61
OTHER DEDUCTION		
Loss from joint venture		1,844.56
LOSS BEFORE INCOME TAXES		$1,071,494.17
PROVISION FOR INCOME TAXES (Note 4)		
Reduction of income tax based on California loss		506,086.18
NET LOSS		$ 565,407.99

The Notes to Financial Statements are an integral part of this statement.

STATEMENT OF RETAINED EARNINGS

Year Ended December 31, 1982

BALANCE - January 1, 1982	$683,064.57
Deduct - Net loss	565,407.99
BALANCE - December 31, 1982	$117,656.58

The Notes to Financial Statements are an integral part of this statement.

STATEMENT OF CHANGES IN FINANCIAL POSITION

Year Ended December 31, 1982

FINANCIAL RESOURCES APPLIED TO	
Operations:	
Net loss	$(565,407.99)
Items which did not require outlay of working capital during the year:	
Depreciation	$17,676.33
Amortization	6,383.83
Loss from joint venture	1,844.56
WORKING CAPITAL APPLIED TO OPERATIONS	$ 39,503.27
Deposits	275.00
Acquisition of property and equipment:	
Machinery and equipment	126,062.32
Automobiles and trucks	29,363.30
Office furniture and fixtures	5,486.76
Buildings	92,615.00
TOTAL FINANCIAL RESOURCES APPLIED	$ 293,305.65
DECREASE IN WORKING CAPITAL	$ 293,305.65

SUMMARY OF CHANGES IN WORKING CAPITAL COMPONENTS

Increase (decrease) in current assets:	
Cash	$ 32,984.53
Accounts receivable	458,690.93
Inventories	(880,167.68)
Prepaid expenses	2,446.10
	$(386,046.12)
Increase (decrease) in current liabilities:	
Accounts payable	$ (63,926.90)
Accrued salaries and wages	(1,608.90)
Sales tax payable	(760.75)
Accrued workmen's compensation insurance	(10,948.70)
Accrued pension plan contribution	(11,155.00)
Other items accrued or payable	(4,340.22)
	$ (92,740.47)
DECREASE IN WORKING CAPITAL	$ 293,305.65

The Notes to Financial Statements are an integral part of this statement.

NOTES TO FINANCIAL STATEMENTS

December 31, 1982

Note 1. Summary of Significant Accounting Policies

The Company uses the direct charge-off method of accounting for bad debts. At the end of the year, the receivables are reviewed and all of the accounts which are considered uncollectible are charged off to expense.

Inventories are generally stated at the lower of cost (first-in, first-out method) or market. Market is considered as the net realizable value.

Property and equipment are carried at cost. Major additions and betterments are charged to property accounts while replacements, maintenance, and repairs which do not improve or extend the life of the respective assets are expensed currently. Property and equipment purchased after December 31, 1980, are depreciated using the Accelerated Cost Recovery System as described in the Economic Recovery Tax Act of 1981. For property and equipment purchased prior to January 1, 1981, depreciation is computed using accelerated methods for substantially all new assets, while depreciation is computed using the straight-line method for used assets. These depreciation methods are used for both financial reporting and income tax purposes.

The investment in the joint venture is being accounted for by the equity method. Under the equity method the investment is carried at cost adjusted for the Company's share of the net income or loss of the investee subsequent to acquisition.

Goodwill is being amortized over fifteen years by the straight-line method. Patents are being amortized over their respective remaining lives.

Note 2. Excess Distribution from Joint Venture

Concrete Pipe & Products Co., Inc., of California has a 60% interest in a joint venture doing business under the name of CVR-CP&P/Hydro Conduit. This joint venture was formed to produce so much of the concrete pipe required by the Sacramento Regional County Sanitation District as the joint venture was the successful bidder. As of December 31, 1982, the joint venture had produced and delivered all of the pipe required for the project. However, the joint venture remains in existence pending settlement of certain legal matters.

As mentioned in Note 1, the joint venture has been accounted for on the equity method. The changes in the investment account are summarized below:

Balance – January 1, 1982 (Deficit)	$(48,186.45)
Deduct – Share of loss	1,844.56
Balance – December 31, 1982 (Deficit)	$(50,031.01)

RESULTS OF OPERATIONS

Income	$ –
Costs and operating expenses	3,074.27
NET LOSS	$3,074.27

Distribution of net loss:

Concrete Pipe & Products Co., Inc., of California	$1,844.56
Hydro Conduit Corporation	1,229.71
TOTAL	$3,074.27

At December 31, 1982, Concrete Pipe had a receivable from the joint venture of $11,177.53 and a payable to the joint venture of $64,116.96.

Note 3. Related Parties and Related Party Transactions

The Company is a wholly owned subsidiary of Concrete Pipe and Products Company, Inc. The parent company from time to time made noninterest bearing advances to the Corporation which amounted to $2,815,594.24 at December 31, 1982. The Company's parent also owns a 49% interest in Navas Pipe Supply Company. During the year, Company sales to Navas Pipe Supply Company were $2,080,751.43. Accounts receivable from Navas Pipe Supply at December 31, 1982, amounted to $2,987.75 and accounts payable amounted to $267.12. In addition, the Company received $8,467.37 for administrative and other services furnished to Navas Pipe Supply.

Note 4. Income Taxes

At the date of this report, consolidated Federal income tax returns through 1979 have been examined by the Internal Revenue Service and all known adjustments have been recorded.

Note 5. Pension Plan

Concrete Pipe & Products Company, Inc., and its subsidiaries have adopted an employee retirement plan covering substantially all of their employees. The plan was effective for the parent Company and Southern Brick & Supply Co., Incorporated, as of January 1, 1970, for Concrete Pipe & Products Co., Inc. of Manassas December 6, 1973, and for this Company January 1, 1977. The Company's policy is to fund the total of (a)

currently accruing pension costs and (b) an amount equal to the amortization of past service costs over periods not exceeding 30 years. The total contribution to the pension plan for 1982 was $554,930.00 with this Company's share amounting to $45,543.00. The accumulated plan benefits and plan net assets as of January 1, 1982, for the retirement plan of Concrete Pipe & Products Company, Inc., and subsidiaries are presented below:

Actuarial present value of accumulated plan benefits:

Vested	$1,694,582.00
Nonvested	243,322.00
	$1,937,904.00
Net assets available for benefits	$3,694,517.03

The assumed rate of return used in determining the actuarial present value of accumulated plan benefits was 9.75%.

Note 6. Leases and Lease Commitments

The Company leases land at its Shafter and Sacramento plants.

The lease at Shafter expires on September 30, 1983. Rentals are paid quarterly in advance and the Company is to reimburse the lessor for property taxes. The annual rental is $17,985.00.

The Sacramento lease is for a ten-year period, which started in 1979, with an option to renew for two consectutive [sic] renewal terms of five years each. The annual rental is $8,400.00. The Company is to pay all property taxes and is to maintain public liability insurance on the leased property.

In 1980, the Company entered into a lease agreement with BT Leasing Services, Inc., for machinery and improvements. The lease will be for

fifteen years with no option to purchase. In accordance with Financial Accounting Standards Board Statement No. 13 - Accounting for Leases, this lease will be classified as an operating lease. Under the terms of the lease agreement, the Company is responsible for maintaining the equipment in good operating condition. In addition, the Company is liable for all taxes on the equipment and improvements as well as maintaining proper insurance coverage. The lessor has agreed to pass through all investment tax credit available on the equipment to the Company.

Minimum rental commitments under all non-cancellable leases are as follows:

	REAL ESTATE	MACHINERY	TOTAL
1983	$ 102,157.56	$ 332,260.80	$ 434,418.36
1984	$ 102,157.56	$ 332,260.80	$ 434,418.36
1985	$ 102,157.56	$ 332,260.80	$ 434,418.36
1986	$ 102,157.56	$ 332,260.80	$ 434,418.36
1987	$ 102,157.56	$ 332,260.80	$ 434,418.36
Thereafter	735,607.96	2,520,189.53	3,255,797.49
	$1,246,395.76	$4,181,493.53	$5,427,889.29

Total rental expense for 1982 was as follows:

Real Estate	$120,142.56
Machinery and equipment	332,335.65
	$452,478.21

Note 7. Contingent Liabilities

The California Construction Laborers Union has instituted suit seeking to recover not less than $268,168.81, plus liquidated damages and counsel fees. The suit results from a withdrawal penalty which the union has asserted against the

Company. Management is of the opinion that the Company is not liable.

In addition, the Company was defendant in several actions arising in the normal course of business. Management is of the opinion that either adequate provision has been made for any loss or that the Company has sufficient insurance coverage.

MITCHELL, WIGGINS & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
411 Ross Building
P.O. Box 1580
Richmond, Virginia 23213
648-7211 area code 804

The Officers and Directors
Concrete Pipe & Products Co.,
Inc., of California
Lockeford, California

The accompanying additional financial information is presented for supplementary analysis purposes and is not considered necessary for a fair presentation of the basic financial statements. The supplementary financial information has been subjected to the applicable audit procedures we performed in our examination of the related basic financial statements.

In our opinion, the supplementary financial information is fairly stated in all material respects in relation to the financial statements taken as a whole.

/s/ Mitchell, Wiggins
& Company
Certified Public Accountants

February 14, 1983

SUPPLEMENTARY DATA

STATEMENT OF INCOME – BY PLANTS

Year Ended December 31, 1982

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	RECLASSI-FICATIONS AND ELIMINA-TIONS	TOTAL
GROSS SALES						
Concrete pipe and products	$ –	$ 958,501.03	$ 2,192,538.98	$ 2,260,735.28	$ –	$ 5,411,775.29
Freight charges	–	13,158.69	200,302.23	229,694.25	–	443,155.17
Shop	992,968.64	–	–	–	–	992,968.64
Interplant	350,414.71	–	–	–	(350,414.71)	–
Intercompany	54,986.76	–	–	–	–	54,986.76
TOTALS	$ 1,398,370.11	$ 971,659.72	$ 2,392,841.21	$ 2,490,429.53	$ (350,414.71)	$ 6,902,885.86
Deduct – Delivery costs	–	47,190.33	258,776.09	274,542.13	–	580,508.55
NET SALES	$ 1,398,370.11	$ 924,469.39	$ 2,134,065.12	$ 2,215,887.40	$ (350,414.71)	$ 6,322,377.31
COST OF PRODUCTS SOLD	1,115,947.18	1,073,764.76	2,484,749.87	2,341,664.29	(350,414.71)	6,665,711.39
GROSS PROFIT (LOSS) ON SALES	$ 282,422.93	$ (149,295.37)	$ (350,684.75)	$ (125,776.89)	$ –	$ (343,334.08)
OPERATING EXPENSES						
Administrative	$ 100,583.27	$ 20,116.62	$ 141,197.87	$ 142,166.55	$ –	$ 404,064.31
Selling	57,621.85	31,551.68	121,634.38	68,058.36	–	278,866.27
Engineering	91,649.85	–	11,666.68	11,666.61	–	114,983.14
TOTAL	$ 249,854.97	$ 51,668.30	$ 274,498.93	$ 221,891.52	$ –	$ 797,913.72
INCOME (LOSS) FROM OPERATIONS	$ 32,567.96	$ (200,963.67)	$ (625,183.68)	$ (347,668.41)	$ –	$ (1,141,247.80)
OTHER INCOME						
Discounts earned	$ 214.77	$ 1,369.17	$ 4,731.09	$ 4,629.29	$ –	$ 10,944.32
Royalties	10,256.28	–	–	13,220.18	–	23,476.46
Miscellaneous	11,134.06	16,966.72	7,421.40	1,655.23	–	37,177.41
TOTAL OTHER INCOME (Forward)	$ 21,605.11	$ 18,335.89	$ 12,152.49	$ 19,504.70	$ –	$ 71,598.19

STATEMENT OF INCOME – BY PLANTS

(Continued)

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	RECLASSI-FICATIONS AND ELIMINA-TIONS	TOTAL
TOTAL OTHER INCOME (Forwarded)	$ 21,605.11	$ 18,335.89	$ 12,152.49	$ 19,504.70	$ –	$ 71,598.19
INCOME (LOSS) BEFORE OTHER DEDUCTION	$ 54,173.07	$ (182,627.78)	$ (613,031.19)	$ (328,163.71)	$ –	$ (1,069,649.61)
OTHER DEDUCTION						
Loss from joint venture	–	–	–	–	1,844.56	1,844.56
INCOME (LOSS) BEFORE INCOME TAXES	$ 54,173.07	$ (182,627.78)	$ (613,031.19)	$ (328,163.71)	$ (1,844.56)	$ (1,071,494.17)
REDUCTION OF INCOME TAXES						506,086.18
NET LOSS						$ (565,407.99)

COST OF PRODUCTS MANUFACTURED AND SOLD

Year Ended December 31, 1982

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	ELIMINA-TIONS AND ADJUST-MENTS	TOTAL
RAW MATERIALS USED						
Cement	$ –	$ 91,570.99	$ 163,859.95	$ 204,811.91	$ –	$ 460,242.85
Sand and gravel	–	36,313.73	103,222.18	99,682.73	–	239,218.64
Rinforcing bars and hot rods	–	107,540.50	269,042.46	278,898.61	–	655,481.57
Miscellaneous steel	–	–	1,924.23	4,935.94	–	6,860.17
Welding rods	7,985.24	903.00	1,574.60	1,082.68	–	11,545.52
Gaskets and materials	–	18,668.50	28,618.61	32,112.02	–	79,399.13
Miscellaneous materials	–	2,340.90	11,252.47	18,365.95	–	31,959.32
Shop materials	488,243.79	–	–	–	–	488,243.79
Purchased components	26,566.38	–	–	–	–	26,566.38
TOTALS	$ 522,795.41	$ 257,337.62	$ 579,494.50	$ 639,889.84	$ –	$ 1,999,517.37
LABOR	$ 319,064.05	$ 232,937.39	$ 507,409.95	$ 411,960.78	$ –	$ 1,471,372.17
MANUFACTURING EXPENSES						
Power	$ 43,691.03	$ 39,043.24	$ 26,074.93	$ 28,390.48	$ –	$ 137,199.68
Gas, oil and grease	5,829.96	25,652.72	29,847.44	41,663.40	–	102,993.52
Repairs and maintenance	23,019.17	4,112.84	1,983.04	1,467.99	–	30,583.04
Rent expense	30.24	17,985.00	257,796.45	176,666.52	–	452,478.21
Miscellaneous manufacturing expense	34,551.86	185,788.77	343,137.11	311,585.69	–	875,063.43
Payroll taxes	26,106.00	19,843.46	45,805.55	41,478.66	–	133,233.67
TOTAL	$ 133,228.26	$ 292,426.03	$ 704,644.52	$ 601,252.74	$ –	$ 1,731,551.55
MANUFACTURING COST FOR INVENTORY VALUATION (Forward)	$ 975,087.72	$ 782,701.04	$ 1,791,548.97	$ 1,653,103.36	$ –	$ 5,202,441.09

COST OF PRODUCTS MANUFACTURED AND SOLD

(Continued)

	LOCKEFORD	SHAFTER	SACRA-MENTO	FLORIN	ELIMINA-TIONS AND ADJUST-MENTS	TOTAL
MANUFACTURING COST FOR INVENTORY VALUATION (Forwarded)	$ 975,087.72	$ 782,701.04	$ 1,791,548.97	$ 1,653,103.36	$ –	$ 5,202,441.09
FACTORY ADMINISTRATIVE EXPENSES						
Supervisory and factory office salaries	$ 49,203.37	$ 10,103.43	$ 75,911.12	$ 34,300.08	$ –	$ 169,518.00
Travel and auto expense	11,159.79	47,222.29	15,417.27	17,629.61	–	91,428.96
Taxes:						
Land and buildings	6,921.33	723.15	3,848.55	7,857.78	–	19,350.81
Machinery and equipment	1,681.88	(2,085.46)	35,664.12	28,234.32	–	63,494.86
Payroll	3,817.00	1,137.00	5,529.00	2,467.00	–	12,950.00
Depreciation:						
Factory buildings	12,005.00	50,920.01	1,840.78	1,597.35	–	66,363.14
Machinery and equipment	26,349.87	–	185,622.30	176,289.46	–	388,261.63
Autos and trucks	1,221.03	–	3,919.43	1,934.39	–	7,074.85
Furniture and equipment	1,181.29	–	874.40	3,043.84	–	5,099.53
Insurance	7,475.30	24,810.38	(12,406.77)	52,352.06	–	72,230.97
Contribution to employees' pension plan	4,555.00	1,828.31	15,380.94	10,869.61	–	32,633.86
Miscellaneous manufacturing expense	10,200.48	37,376.18	23,389.04	39,325.83	–	110,291.53
TOTALS	$ 135,771.34	$ 172,035.29	$ 354,990.18	$ 375,901.33	$ –	$ 1,038,698.14
TOTAL MANUFACTURING COST	$ 1,110,859.06	$ 954,736.33	$ 2,146,539.15	$ 2,029,004.69	$ –	$ 6,241,139.23
Add: Finish products inventory – January 1, 1982	51,608.74	141,501.21	846,281.00	240,224.72	–	1,279,615.67
Purchases for resale	–	–	195.00	–	–	195.00
Transfers from other division	–	42,313.75	119,843.26	130,554.57	(292,711.58)	–
TOTALS	$ 1,162,467.80	$ 1,138,551.29	$ 3,112,858.41	$ 2,399,783.98	$ (292,711.58)	$ 7,520,949.90
Deduct: Finish products inventory – December 31, 1982	46,520.62	64,786.53	628,108.54	58,119.69	–	797,535.38
Products used in construction and repairs	–	–	–	–	57,703.13	57,703.13
COST OF PRODUCTS SOLD	$ 1,115,947.18	$ 1,073,764.76	$ 2,484,749.87	$ 2,341,664.29	$ (350,414.71)	$ 6,665,711.39

SCHEDULE OF OPERATING EXPENSES

Year Ended December 31, 1982

	ADMINISTRATIVE	SELLING	ENGINEERING	TOTAL
Salaries	$160,903.65	$158,850.24	$ 84,049.92	$403,803.81
Travel and auto expense	29,991.95	41,045.69	4,016.01	75,053.65
Insurance	12,274.82	10,299.49	9,275.62	31,849.93
Telephone	8,476.56	–	–	8,476.56
Dues and subscriptions	1,264.62	–	–	1,264.62
Supplies	4,758.43	–	–	4,758.43
Depreciation:				
Office building	4,404.45	5,556.90	–	9,961.35
Automobiles	3,156.04	13,121.48	–	16,277.52
Furniture and equipment	5,690.88	781.03	–	6,471.91
Amortization:				
Goodwill	6,023.39	–	–	6,023.39
Patents	360.44	–	–	360.44
Postage	2,090.90	–	–	2,090.90
Data processing services	5,084.29	–	–	5,084.29
Repairs and maintenance	641.56	–	–	641.56
Rent and utilities	6,401.27	–	–	6,401.27
Contribution to employees' pension plan	9,624.14	9,140.56	4,569.79	23,334.49
Taxes and licenses	200.00	–	–	200.00
Payroll taxes	10,189.86	13,562.00	6,801.00	30,552.86
Miscellaneous	16,042.98	26,508.88	6,270.80	48,822.66
Professional fees	62,445.01	–	–	62,445.01
Contributions	861.00	–	–	861.00
Uncollectible accounts	53,178.07	–	–	53,178.07
	$404,064.31	$278,866.27	$114,983.14	$797,913.72

	Initials	Date
Prepared By		
Approved By		

EXHIBIT E-3

Concrete Pipe & Products Co., Inc. of California

Balance Sheet

June 30, 1983

	Current Month	Prior Month	Change
ASSETS:			
Current Assets:			
Cash	98,309.37	81,041.27	17,268.10
Accounts Receivable	994,309.58	557,103.86	437,205.72
Inventories:			
Finished Products	1,072,451.84	1,167,654.61	<95,202.77 >
Shop Resale Items	47,036.86	46,886.67	150.19
Shop Work In Process	30,020.53	37,041.65	<7,021.12 >
Raw Materials – Plants	247,330.49	157,766.47	89,564.02
Raw Material – Shop	65,394.94	62,659.72	2,735.22
Factory Supplies	9,638.40	2,580.96	7,057.44
Total Inventories	1,471,873.06	1,474,590.08	<2,717.02 >
Prepaid Expenses	3,276.60	8,590.44	<5,313.84 >
Deposits	10,075.00	10,075.00	-0-
Investment in Joint Venture	<50,031.01 >	<50,031.01 >	-0-
Total Current Assets	2,527,812.60	2,081,369.64	446,442.96
Plant Assets:			
Land	181,752.78		
Factory Buildings	251,428.99		
Office Buildings	153,972.62	SAME	-0-
Machinery & Equipment	3,394,564.39		
Autos & Trucks	158,349.97		
Office Furn. & Equip.	71,161.07		
Leasehold Improvements	28,758.65		
Total	4,239,988.47	4,239,988.47	-0-
Less Accum. Depreciation	3,237,454.77	3,199,513.77	37,941.00
Net Plant Assets	1,002,533.70	1,040,474.70	<37,941.00 >
Intangibles:			
Goodwill	50,696.57	51,198.57	<502.00 >
Patents	1,382.44	1,417.44	<35.00 >
Organization Expense			
Total Assets	3,582,425.31	3,174,460.35	407,964.96

Concrete Pipe & Products Co., Inc. of California

Balance Sheet

June 30, 1983

	Current Month	Prior Month	Change
Liabilities & Capital:			
Current Liabilities:			
Accounts Payable – Trade	421,723.80	201,020.08	220,703.72
Accounts Payable CP & P	2,781,296.55	2,765,734.50	15,562.05
Other Liabilities	73,536.96	78,787.34	<5,250.38 >
Other Accruals:			
Income Taxes Payable	-0-	-0-	
Salaries & Wages	42,808.70	26,384.77	16,423.93
Payroll Taxes	12,241.59	13,943.53	<1,701.94 >
Employee Contributions	966.17	1,016.47	<50.30 >
Group Insurance	6,563.55	6,669.87	<106.32 >
Administrative Pensions	26,652.00	67,753.00	<41,101.00 >
Workers Compensation Ins.	56,399.00	53,610.00	2,789.00
Sales Tax	30,878.15	15,999.19	14,878.96
Property Taxes	-0-	<3,849.62 >	3,849.62
Total Current Liabilities	3,453,066.47	3,227,069.13	225,997.34
Capital:			
Capital Stock	300,000.00	300,000.00	-0-
Retained Earn. Prior Years	117,656.58	117,656.58	-0-
Retained Earn. Current Year	<288,297.74 >	<470,265.36 >	181,967.62
Total Capital	129,358.84	<52,608.78 >	181,967.62
Total Liabilities & Capital	3,582,425.31	3,174,460.35	407,964.96

Concrete Pipe & Products Co., Inc. of California

Consolidated Income Statement

June 1983

Pipe Plants:	Current Income & Exp.	Month % of Gross Sales	Year To Income & Exp.	Date % of Gross Sales
Gross Sales:				
Concrete Pipe & Products	715,530.62	100.00	1,571,821.97	100.00
Deduct:				
Delivery Costs	94,437.84	13.20	197,318.03	12.55
Net Sales	621,092.78	86.80	1,374,503.94	87.45
Cost of Products Sold	419,061.81	58.57	1,522,286.55	96.85
Gross Profit on Sales	202,030.97	28.23	<147,782.61 >	<9.40 >
Operating Expenses:				
Selling	19,341.19	2.70	122,564.04	7.80
Administrative	19,785.79	2.77	125,778.71	8.00
Engineering	1,659.46	.23	10,855.28	.69
Total Operating Expenses	40,786.44	5.70	259,198.03	16.49
Income From Operations	161,244.53	22.53	<406,980.64 >	<25.89 >
Other (Inc.) Exp.	<8,938.19 >	<1.25 >	<134,955.88 >	<8.59 >
Net Income – Pipe Plants	170,182.72	23.78	<272,024.76 >	<17.30 >
PARAFAB – Net Inc. (Loss)	11,784.90		<16,272.98 >	
Profit (Loss) From J.V.	-0-		-0-	
Income Before Taxes	181,967.62		<288,297.74 >	
Consolidated Gross Sales:				
Pipe Plants	715,530.62		1,571,821.97	
Parafab Engineering (*)	64,298.13		366,165.93	
Total	779,828.75		1,937,987.90	

(*) Does not include Inter-Plant Sales

INCOME STATEMENT

Plant: Parafab Eng. Month: June 1983

	Current Month	% of Gross Sales	Current Month	% of Gross Sales
Sales:				
Outside Sales:				
Shop	20,459.03	16.16	156,900.30	31.82
Resale Parts	3,424.85	2.70	18,032.48	3.66
Inter Company	40,414.25	31.92	191,233.15	38.77
Inter Plant:				
For Resale	59,002.90	46.59	98,152.49	19.90
Other	3,334.56	2.63	28,874.08	5.85
Total Sales	126,635.59	100.00	493,192.50	100.00
Cost of Goods Sold	80,419.59	63.50	322,860.71	65.46
Gross Profit	46,216.00	36.50	170,331.79	34.54
Factory Adm. Expense	15,988.57	12.63	84,776.75	17.19
Gross Profit On Sales	30,227.43	23.87	85,555.04	17.35
Operating Expenses:				
Selling	5,986.73	4.73	30,556.67	6.20
Administrative	6,546.92	5.17	41,680.07	8.45
Engineering	6,001.46	4.74	34,805.27	7.05
Total Oper. Exp.	18,535.11	14.64	107,042.01	21.70
Income From Operations	11,692.32	9.23	<21,486.97 >	4.35
Other Income:				
Discounts Earned	<2.58 >	-0-	<32.33 >	<.01 >
Royalties	-0-		<2,263.71 >	<.46 >
Misc. Inc.	<90.00 >	<.07 >	<2,917.95 >	<.59 >
Total Other Income	<92.58 >	<.07 >	<5,213.99 >	<1.06 >
Other Expenses				
Income Before Taxes	11,784.90	9.30	<16,272.98 >	<3.29 >

INCOME STATEMENT

Plant: Shafter Month: June 1983

	Current Income & Exp.	Month % of Gross Sales	Year To Date Income & Exp.	% of Gross Sales
Gross Sales:				
Concrete Pipe & Products	31,793.18	100.00	119,451.80	100.00
Deduct:				
Delivery Costs	3,658.23	11.51	11,556.71	9.67
Net Sales	28,134.95	88.49	107,895.09	90.33
Cost of Products Sold	32,734.01	102.96	147,861.89	123.78
Gross Profit on Sales	<4,599.06 >	<14.47 >	<39,966.80 >	<33.46 >
Operating Expenses:				
Selling	4,921.07		31,093.18	
Administrative	1,309.39		8,319.24	
Engineering	-0-		-0-	
Total Operating Expenses	6,230.46		39,412.42	
Income From Operations	<10,829.52 >		<79,379.22 >	
Other Income:				
Discounts Earned			<320.24 >	
Royalties				
Recovery on Bad Debts			<431.84 >	
Gain on Sale of Assets				
Misc. Income	<60.15 >		<4,134.85 >	
Total Other Income	<60.15 >		<4,886.93 >	
Other Deductions:				
Income Before Taxes	<10,769.37 >		<74,492.29 >	

INCOME STATEMENT

Plant: Jackson Road Month: June 1983

	Current Income & Exp.	Month % of Gross Sales	Year To Income & Exp.	Date % of Gross Sales
Gross Sales:				
Concrete Pipe & Products	637,612.64	100.00	1,221,095.17	100.00
Deduct:				
Delivery Costs	71,194.67	11.17	145,579.48	11.92
Net Sales	566,417.97	88.83	1,075,515.69	88.08
Cost of Products Sold	320,945.72	50.34	978,932.63	80.17
Gross Profit on Sales	245,472.25	38.49	96,583.06	7.91
Operating Expenses:				
Selling	8,160.38	1.28	51,594.65	4.23
Administrative	9,197.70	1.44	58,486.73	4.79
Engineering	829.73	.13	5,427.66	.44
Total Operating Expenses	18,187.81	2.85	115,509.04	9.46
Income From Operations	227,284.44	35.64	<18,925.98 >	<1.55 >
Other Income:				
Discounts Earned	<699.33 >	<.11 >	<3,754.09 >	<.30 >
Royalties				
Recovery on Bad Debts			<3,022.86 >	<.25 >
Gain on Sale of Assets			<9.94 >	-0-
Misc. Income	<316.51 >	<.05 >	<53,827.24 >	<4.41 >
Total Other Income	<1,015.84 >	<.16 >	<60,614.13 >	<4.96 >
Other Deductions:				
Income Before Taxes	228,300.28	35.80	41,688.15	3.41

INCOME STATEMENT

Plant: Florin Month: June 1983

	Current Income & Exp.	Month % of Gross Sales	Year To Income & Exp.	Date % of Gross Sales
Gross Sales:				
Concrete Pipe & Products	46,124.80	100.00	231,275.00	100.00
Deduct:				
Delivery Costs	19,584.94	42.46	40,181.84	17.37
Net Sales	26,539.86	57.54	191,093.16	82.63
Cost of Products Sold	65,382.08	141.75	395,492.03	171.01
Gross Profit on Sales	<38,842.22 >	<84.21 >	<204,398.87 >	<88.38 >
Operating Expenses:				
Selling	6,259.74		39,876.21	
Administrative	9,278.70		58,972.74	
Engineering	829.73		5,427.62	
Total Operating Expenses	16,368.17		104,276.57	
Income From Operations	<55,210.39 >		<308,675.44 >	
Other Income:				
Discounts Earned	<.24 >		<1.03 >	
Royalties	<1,791.34 >		<7,392.03 >	
Recovery on Bad Debts			<3,022.86 >	
Gain on Sale of Assets			<682.00 >	
Misc. Income	<6,070.62 >		<58,356.90 >	
Total Other Income	<7,862.20 >		<69,454.82 >	
Other Deductions:				
Income Before Taxes	<47,348.19 >		<239,220.62 >	

EXHIBIT F

REPORT ON
EMPLOYER WITHDRAWAL LIABILITY

CONSTRUCTION LABORERS PENSION TRUST
FOR SOUTHERN CALIFORNIA

January 1, 1982

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October 1982

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October 8, 1982

Board of Trustees
Construction Laborers Pension
Trust for Southern California
Los Angeles, California

Gentlemen:

This report summarizes and reviews the Plan's status and experience with respect to employer withdrawal liability as of December 31, 1981. It outlines the withdrawal liability provisions adopted, and explains the calculation for determining the amount of liability of a withdrawn employer.

The information in this report has been separated into the following sections:

I. DETERMINATION OF WITHDRAWAL LIABILITY ..... p. 3

II. THE PLAN'S WITHDRAWAL LIABILITY POOLS.... p. 7

III. WITHDRAWAL LIABILITY EXPERIENCE..... p. 9

APPENDIX A: THE PLAN'S METHOD FOR ALLOCATING WITHDRAWAL LIABILITY p. 10

APPENDIX B: EXAMPLE – WITHDRAWAL IN 1982..... p. 13

APPENDIX C: WITHDRAWAL LIABILITY WORKSHEETS ..... p. 16

ATTACHMENT: ACTUARIAL CERTIFICATION OF WITHDRAWAL LIABILITY POOLS

We look forward to reviewing this information with you at your next meeting.

Sincerely,

/s/ James Laws, F.S.A.
Vice President and Actuary

cc: Co-legal Counsel
Administrator
Collection Office
Mr. Emil Matyas

I. DETERMINATION OF WITHDRAWAL LIABILITY

The Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), signed into law on September 26, 1980, requires assessment of withdrawal liability on an employer that withdraws from the Plan. Under the law an employer has withdrawn completely if it has permanently ceased operations under the Plan or has permanently ceased to have an obligation to contribute to the Plan. Withdrawal may also be partial. An employer in the construction industry is considered to have withdrawn from the plan only if he continues to do the same type of work in the jurisdiction of the labor contract.

The amount of withdrawal liability is based essentially on the Plan's unfunded vested benefits at the time of withdrawal. For this purpose "vested benefits" are the benefits which are not forfeitable if the participant incurs a permanent break in service. The unfunded part refers to the amount not covered by assets.

The Plan's method of allocating liability to employers that withdraw from the Plan involves prorating the

unfunded vested liability as of December 31, 1979 plus (or minus) a proration of changes in the liability at each subsequent year end.

The allocation method, described more fully in Appendix A, is reviewed in this section. There is an annual determination of the Plan's unfunded vested liability, and this makes possible an allocation to any withdrawing employer or one who requests the information. The "allocation" is simply a bookkeeping record, without effect, unless the employer withdraws.

The unfunded vested liability as of December 31, 1979 becomes the first pool of allocable liability and is prorated among the employers in proportion to their contributions in the 5-year period that ended on that date. For a withdrawal in the year ended December 31, 1980, that was the only pertinent figure.

For withdrawals in 1981 and later years, year-to-year changes in the unfunded vested liability are included in determining a withdrawn employer's obligation. If a change was favorable – that is, a drop in the unfunded vested liability – it is applied as an offset or credit against liability from other years.

The new pool of allocable liability is determined by comparing the unfunded vested liability at the end of the most recent year with the unamortized balance of the corresponding figures from the previous year or years. "Unamortized balance" refers to the fact that the old unfunded liability amounts are reduced annually by 5 percent of their original amounts; for example, the December 31, 1979 pool is reduced by 5% to determine its value on December 31, 1980.

This new pool (as of December 31, 1980) is allocable, when necessary, to a withdrawn employer in proportion to its contributions in the 5-year period that ended on that date.

The same process is repeated annually, so that the total withdrawal liability for a particular employer consists of the sum of several allocated amounts. However, each annual allocated amount is reduced by 5 percent with each passing year.

Other liability pools may be established and added to the total amount to be allocated for possible withdrawal liability; namely, the amounts not collected because of bankruptcy, deductibles subtracted from amounts actually assessed, or other limitations on withdrawal assessments specified in the law. These noncollected or nonassessable amounts are reallocated among the employer accounts. For purposes of this report, these are referred to as "reallocated pools" to distinguish them from the "basic pools", described above. These amounts are also subject to a subsequent 5 percent annual write-down.

If an employer withdraws, the unamortized balances allocated for it for each previous year during which it participated in the Plan are added up. (Negative balances are subtracted.)

To repeat, these allocations are simply a bookkeeping account. The resulting figures are converted into a liability assessment only if and when an employer withdraws.

Deductible

The gross charge for withdrawal is subject to a maximum deductible of $50,000 but not more than 3/4 of 1 percent of the Plan's unfunded vested liability as of the Plan year-end prior to withdrawal. If the gross liability of a specific employer is less than that amount, there is no assessment on the employer. If it is somewhat more, the deductible is applied on a diminishing basis – for every dollar the gross liability of the withdrawn employer is over $100,000, the deductible is reduced by a dollar. (In short, if an employer's gross liability exceeds $100,000 plus the maximum deductible, there is no deductible.)

Since 3/4 of 1 percent of the Plan's unfunded vested liability has been greater than $50,000, the maximum deductible has been $50,000.

A withdrawing employer with a gross liability of $50,000 or less would not be assessed any liability. If the employer's gross liability were more than $50,000 but less than $100,000, then the assessed liability would equal the gross liability less $50,000. If the gross liability were less than $150,000 but greater than $100,000, the deductible would be determined by subtracting the gross liability from $150,000. If the gross liability were greater than $150,000, there would be no deductible.

Maintenance of allocations

Even if no employer withdrawal had occurred, the method requires determination annually of the value of the Plan's unfunded liability for vested benefits. The Plan must be in a position to prorate liability based on the

withdrawn employer's contribution history. These procedures and records are necessary in order to be able to determine an assessment should withdrawal occur and also to respond, as required by law, to an inquiry from a participating employer as to the amount of its potential liability.

Actuarial assumptions

Determination of the value of vested benefits has to be based on a set of actuarial assumptions. The law prescribes that the assumptions and methods used must be reasonable in the aggregate and "offer the actuary's best estimate of anticipated experience under the plan." It also authorizes the Pension Benefit Guaranty Corporation (PBGC) to promulgate other assumptions and methods for use by the Plan's actuary. However, the PBGC has not yet promulgated withdrawal liability assumptions.

Our "best estimate" involves the same actuarial assumptions as are used in our valuations for Plan funding, with the exception of the assumed rate of investment return, the value ascribed to Plan assets, and expenses. The method used for determining the unfunded vested liability is as follows:

1. To the extent the market value of assets covers the liability, the interest assumptions are on a plan termination basis, using interest assumptions developed by the PBGC for single employer plan terminations. As of December 31, 1981, the interest assumption applicable to retirees was 11.00% (as of December 31, 1980 and 1979, the corresponding interest assumptions were 9.25%

and 8.50%); lower interest assumptions apply to deferred retirees.

2. Any remaining unfunded vested liability is valued at the valuation rate of interest of 6.00%

3. Other actuarial assumptions are the same as applied in the actuarial valuation although there is no explicit allowance for administrative expenses. An expense assumption is implicit in the PBGC interest assumptions.

Further details are given in the attached actuarial certification.

Payment of withdrawal liability

The total amount of an employer's withdrawal liability is not ordinarily payable in a lump sum. The law fixes annual payment amounts, to be paid in quarterly installments, unless the plan has fixed some other schedule. The Trustees have adopted a monthly payment schedule. The annual payment (for complete withdrawal) required from a withdrawn employer is determined by multiplying:

(1) the highest hourly rate the employer was obligated to pay during the last 10 Plan Years in which it participated, by

(2) the employer's average covered hours in the 3 consecutive Plan Years (within the 10 years preceding withdrawal) in which its covered hours were highest.

Payment discontinues when the total liability, with interest, has been paid. (The law imposes a 20-year maximum.) Interest is charged during the payout period at the valuation rate of interest (6.00%).

II. THE PLAN'S WITHDRAWAL LIABILITY POOLS

Basic Pools

The plan's aggregate unfunded vested liability for the past three years and the December 31, 1981 basic withdrawal liability pools are shown below.

Plan Year Ended December 31	Aggregate Unfunded Vested Liability	Withdrawal Liability Pool as of December 31, 1981
1979	$493,322,600	$443,990,400
1980	514,181,200	43,248,500
1981	532,621,400	45,382,500
Total of Basic Withdrawal Liability Pools as of December 31, 1981		$532,621,400

It should be noted that the sum of the three basic pools ($532,621,400) equals the aggregate unfunded vested liability as of December 31, 1981.

Reallocated pools

In addition, withdrawal liability includes a prorated share of the nonassessable or noncollectible liabilities that have been reallocated. Those allocations are also reduced by 5% each year.

The first reallocated pool, equal to $795,500, has been established as of December 31, 1981. This amount equals the sum of:

1. The deductible amounts of employers who had withdrawn as of December 31, 1981 and received a notice of withdrawal; and,

2. The gross liability of employers who had withdrawn as of December 31, 1981 and have filed a bankruptcy notice.

Further discussion of the withdrawal liability experience through December 31, 1981 is contained in Section III of this report.

The details for the determination of the unfunded vested liability amounts and the withdrawal liability basic and reallocated pools are contained in Exhibits I and II of the attached actuarial certificate.

Determination of withdrawal liability

As explained earlier, an employer's withdrawal liability is determined by adding up the balances (as of the preceding Plan Year end) of its share of the basic pools and of any reallocated pools. "Balances" refers to the fact that each pool is written down annually by 5% of its original amount. Each pool is prorated to each employer based on the ratio of the employer's obligated contributions in each 5-year period prior to the establishment of the pool.

Appendix B provides a detailed example of how the pools and procedures described herein are applied to determine the withdrawal liability and payment schedule for a hypothetical employer who withdrew during 1982.

Appendix C provides the administrative worksheets which can be used to calculate or estimate the amount of withdrawal liability for an employer withdrawing in 1982 by filling in the appropriate 5-year contribution figures.

III. WITHDRAWAL LIABILITY EXPERIENCE

Based on information received from the Collection Office, this section reviews the withdrawal liability experience of the Trust through December 31, 1981. The information included 43 withdrawn employers to whom a liability notice was sent. Of this total, six employers elected to re-sign the labor agreement, leaving 37 employer withdrawals.

Of these 37 withdrawn employers, seven are shown as not employing laborers in this jurisdiction so that no liability is collectible at this time. If any of these seven employers do employ laborers in the jurisdiction within the ensuing five years, the Collection Office will then rebill them for withdrawal liability. The gross liability (before the deductible amount) for these seven employers totalled $559,531.

One of the withdrawn employers is selling his business and the withdrawal liability billing may change following the asset sale in accordance with the provisions of MPPAA – the current billed amount is for $157,998.

One of the withdrawn employers has filed for bankruptcy and his assessment of $88,655 ($119,327 less deductible of $30,672) is presumed uncollectible.

All but one of the remaining 28 withdrawn employers have outstanding withdrawal payment obligations to the

Trust – one withdrawn employer paid his obligation in full in November, 1981. The audit report shows that the total withdrawal liability payments actually received during 1981 totalled $25,043. The total deductible amounts for these 28 employers was $676,128. This amount plus the $119, 327 liability of the bankrupt employer, a total of $795,455, has been established as a reallocated pool as of December 31, 1981 – this is an accordance with the specific provisions of MPPAA.

MPPAA also allows the Trustees to include in the reallocated pool any amount which they determine "to be uncollectible or unassessable in that plan year for other reasons under standards not inconsistent with regulations prescribed by the corporation." Based on this section of the Act, we believe the Trustees have the option of including in the reallocated pools the following amounts:

1. The $559,531 gross liability for the seven withdrawn employers no longer employing laborers in this jurisdiction; and

2. The gross liability of withdrawn employers who were not sent a notice of withdrawal because it was clear that the liability, amount was less than the $50,000 deductible amount. Although the total amount of liability for this group of employers is not known, we do understand that there are approximately 400 withdrawn employers included in this category as of December 31, 1981.

APPENDIX A

THE PLAN'S METHOD FOR ALLOCATING WITHDRAWAL LIABILITY

The Plan determines the liability of an employer that has completely withdrawn on the basis of the statutory method defined in Section 4211(b) of ERISA.

The liability assessed to an employer for complete withdrawal from the plan is determined as the sum of the unamortized balances, as of the end of the Plan Year preceding withdrawal, of the employer's prorated shares of each of the following:

(1) the Plan's unfunded liability for vested benefits as of December 31, 1979;

(2) the change in th_ Plan's unfunded liability for vested benefits as of the end of each subsequent Plan Year (to the end of the Plan Year preceding withdrawal); and

(3) reallocated amounts that would have been payable to the Plan as withdrawal liability payments for withdrawals in preceding years, except that they were nonassessable under certain statutory provisions or not collectible.

Unamortized balances. The "unamortized balance" of each of these three sources of liability assessment is determined by reducing each figure by 5 percent of its original amount for each full year from the end of the Plan Year as of which the charge was originally determined to the end of the Plan Year immediately preceding withdrawal.

Initial amount. The Plan's unfunded liability for vested benefits as of December 31, 1979 was determined by

subtracting the market value of Plan assets from the value of vested benefits under the Plan.

Annual changes. The change in the Plan's unfunded liability for vested benefits as of December 31, 1980 is determined as follows:

(1) by establishing the Plan's unfunded liability for vested benefits as of December 31, 1980 (the value then of the Plan's vested benefits less the market value, then, of its assets), and

(2) by subtracting 95 percent (that is, the unamortized balance) of the Plan's unfunded vested liability as of December 31, 1979.

The change in the Plan's unfunded liability for vested benefits as of the end of any subsequent Plan year is determined as follows:

(1) by establishing the Plan's unfunded liabilty [sic] for vested benefits as of the end of that Plan Year, and

(2) by subtracting the total of (a) the unamortized balance of the unfunded liability for vested benefits as of December 31, 1979 and (b) the unamortized balance of each previous annual change after December 31, 1979.

(If the Plan had no unfunded liability for vested benefits as of the end of a year, the unfunded liability is entered as zero.)

A positive change represents an unfunded liability for vested benefits *greater* than the total of the unamortized

balances and is therefore an addition to potential liability assessments for future withdrawals. A negative change represents an unfunded liability for vested benefits *lower* than the total of unamortized balances and is therefore a credit against amounts that would otherwise determine potential liability assessments for future withdrawals. In the determination of an annual change, if the total of the unamortized balances is negative, it is treated as zero.

Reallocated uncollectibles. The total amount, if any, of unfunded liability for vested benefits determined in any Plan year after December 31, 1979 to be nonassessable or noncollectible with respect to employers that withdrew is established as an amount to be prorated among each of the participating employers as an additional withdrawal liability amount. Nonassessable amounts consist of amounts deducted under the *de minimis* rule (sec. 4209), amounts not payable because of the 20-year limit (sec. 4219(c)(1)), and amounts not payable because of the limitations in the event of sale of all of the employer's assets (sec. 4225). Noncollectible amounts consist of amounts that are noncollectible for reasons arising out of cases under the federal bankruptcy law or similar proceedings.

Each annual amount of reallocable nonassessable and noncollectible is written down by 5 percent of the original amount for each full year from the date as of which it was originally determined to the end of the Plan year preceding withdrawal.

Proration to the employer. The unamortized portion of the initial amount of unfunded liability for vested benefits, each annual change in the unfunded liability for vested benefits, and each annual reallocable amount is prorated

to each employer, for determining the amount of its liability in the event of its complete withdrawal, on the basis of the ratio of the employer's obligated contributions to the Plan to the total employer contributions to the Plan during the 5 years ending with the end of the Plan year as of which each of the amounts was determined.

The total of employer contributions with respect to an apportionment base period is reduced by any contributions otherwise included in the total that were made by a significant employer that withdrew from the Plan in or before the Plan Year in which the change or reallocation arose, and by any other employer to which a notice of withdrawal liability was sent by the Plan within the apportionment base period.

A "significant employer" means –

(A) an employer that contributed, in any one Plan Year of the relevant period, at least 1% of total employer contributions to the Plan for that year, as determined for purposes of the relevant denominator or, if lower, $250,000 and

(B) any other employer that was a member of an employer association, a group of employers covered by a single collective bargaining agreement or a group of employers covered by agreements with a single labor organization, if the contribution obligations of substantially all members of the group ceased in a single Plan Year and the group's aggregate contributions to the Plan in any one Plan Year of the relevant period totalled at least 1% of

total employer contributions to the Plan for that year or, if lower, $250,000.

De minimis. Each withdrawal liability assessment is the total of the unamortized balances of the allocated amounts, as defined above, less a *de minimis* deductible. The deductible is $50,000 (but not more than 3/4 of 1 percent of the Plan's unfunded liability for vested benefits). This deductible amount is reduced, dollar for dollar, by the amount by which the total of charges prorated to the employer exceeds $100,000.

APPENDIX B

EXAMPLE – WITHDRAWAL IN 1982

In this example, it was assumed withdrawal occurred in 1982 and the hypothetical employer had been contributing at $3.28 per hour. The contributory hours and contribution rates on behalf of this employer were assumed to be as follows:

Year Ended December 31	Hours	Average Hourly Contribution Rate
1981	15,000	$3.09
1980	20,000	2.73
1979	70,000	2.50
1978	30,000	2.45
1977	55,000	2.13
1976	50,000	1.70
1975	70,000	1.53
1974 & Earlier	30,000	Not applicable

Based on the above chart, this employer's contributions over the relevant 5 year periods would be as follows:

Five Year Period	Employer's Contributions
1975-79, inclusive	$557,750
1976-80, inclusive	505,250
1977-81, inclusive	466,600

The calculation of withdrawal liability for this employer is shown on the following worksheets. Line D of the worksheet on the following page shows that the liability assessment to this hypothetical employer is $1,032,659. This would be paid at the rate of $15,944 per month over an 80 month period plus a smaller final payment of $10,508.

EMPLOYER WITHDRAWAL LIABILITY WORKSHEET FOR WITHDRAWALS DURING THE PERIOD JANUARY 1, 1982 THROUGH DECEMBER 31, 1982

Employer Name: Example

Pool Established	Withdrawal Liability Pool (basic plus reallocated) as of December 31, 1981	Total Plan Contributions During 5-Year Period Prior To Date Pool Established*	Withdrawn Employer Contributions During 5-Year Period Prior To Date Pool Established	Allocation of Withdrawal Liability Pool To Withdrawn Employer. Equals [(4) + (3)] x (2)
(1)	(2)	(3)	(4)	(5)
12/31/79	$443,990,300	$273,549,700	$557,750	$905,267
12/31/80	43,248,500	320,477,600	505,250	68,184
12/31/81	46,178,000	363,916,800	466,600	59,208

*The amounts in this column should be reduced by the contributions of either withdrawn "significant employers" or other employers which received a notice of withdrawal and withdrew from the plan prior to the date shown in column (1).

A.	Aggregate unfunded vested liability as of December 31, 1981	$532,621,400
B.	Withdrawal Liability Attributable to Withdrawn Employer sum of column (5)	1,032,659
C.	Employer's Deductible Amount**	0
D.	Net Withdrawal Liability [line B minus line C]	1,032,659
E.	Withdrawn employer's average annual hours for highest 3 consecutive years during 10 year period preceding January 1, 1982 (1975 to 1977)	58,333
F.	Withdrawn employer's annual payment: equals (E) multiplied by hourly rate***	191,332
G.	Length of payment period (see attached worksheet)	81 months

**The maximum deductible is $50,000. An individual withdrawn employer's deductible is determined as follows:

If line B is less than $50,000, stop here – there is no liability.

If line B is over $50,000, but less than $100,000, enter difference between $50,000 on line C.

If line B is over $100,000 but less than $150,000, enter difference between $150,000 and the line B amount. For example: If line B is $110,000, enter $40,000 ($150,000 minus $110,000).

If line B is $150,000 or more, enter zero – there is no deductible.

***Highest hourly rate at which employer was obligated to contribute – generally $3.28 if withdrawal occurred prior to July 1 and $3.74 if withdrawal occurred on or after July 1, 1982.

Construction Laborers Pension Trust
for Southern California

Worksheet for Determining Length
of Payment Period

Employer name Example

(a)	Required annual payment	$ 191,332
(b)	Withdrawal liability after deductible	$ 1,032,659
(c)	Amount to be amortized = (b)x(1.06000)	$ 1,094,619
(d)	Amortization ratio = (c)/(a)	5.721043
(e)	Largest value in Table Col. I which is less than (d)	5.212364
(f)	Number of years for value (e)	6
(g)	Amount amortized in (f) years = (a)x(e)	$ 997,292
(h)	Amount left to amortize = (c)-(g)	$ 97,327
(i)	Table Col. II value for (f) years	1.418519
(j)	Amount to amortize in final year = (h) x (i); show 0 if (f)=20	$ 138,060
(k)	*Monthly payment* = (a) divided by 12	$ 15,944
(l)	Full payments in final year = (j)/(k)	8
(m)	*Number of full payments* = (l) + 12x(f)	80
(n)	*Final payment* = (j) - (k)x(l)	$ 10,508

Employer payment schedule:

$ 15,944 (k) per month for 80 (m) months plus a final payment of $ 10,508 (n)

October 8, 1982

APPENDIX C

WITHDRAWAL LIABILITY WORKSHEETS

The first worksheet included in this appendix can be used to determine the liability of an employer who withdraws from the Plan in 1982.

The second worksheet and the 6.00% interest function sheet can be used to determine the specific payments required of the withdrawn employer.

EMPLOYER WITHDRAWAL LIABILITY WORKSHEET FOR WITHDRAWALS DURING THE PERIOD JANUARY 1, 1982 THROUGH DECEMBER 31, 1982

Employer Name: _____

Pool Established	Withdrawal Liability Pool (basic plus reallocated) as of December 31, 1981	Total Plan Contributions During 5-Year Period Prior To Date Pool Established*	Withdrawn Employer Contributions During 5-Year Period Prior To Date Pool Established	Allocation of Withdrawal Liability Pool To Withdrawn Employer. Equals [(4) ÷ (3)] x (2)
(1)	(2)	(3)	(4)	(5)
12/31/79	$443,990,300	$273,549,700		
12/31/80	43,248,500	320,477,600		
12/31/81	46,178,000	363,916,800		

*The amounts in this column should be reduced by the contributions of either withdrawn "significant employers" or other employers which received a notice of withdrawal and withdrew from the plan prior to the date shown in column (1).

A. Aggregate unfunded vested liability as of December 31, 1981 ..... $532,621,400
B. Withdrawal Liability Attributable to Withdrawn Employer sum of column (5) ..... _____
C. Employer's Deductible Amount** ..... _____
D. Net Withdrawal Liability [line B minus line C] ..... _____
E. Withdrawn employer's average annual hours for highest 3 consecutive years during 10 year period preceding January 1, 1982 (1975 to 1977) _____
F. Withdrawn employer's annual payment: equals (E) multiplied by hourly rate*** ..... _____
G. Length of payment period (see attached worksheet) ..... _____

**The maximum deductible is $50,000. An individual withdrawn employer's deductible is determined as follows:

If line B is less than $50,000, stop here – there is no liability.

If line B is over $50,000, but less than $100,000, enter difference between $50,000 on line C.

If line B is over $100,000 but less than $150,000, enter difference between $150,000 and the line B amount. For example: If line B is $110,000, enter $40,000 ($150,000 minus $110,000).

If line B is $150,000 or more, enter zero – there is no deductible.

***Highest hourly rate at which employer was obligated to contribute – generally $3.28 if withdrawal occurred prior to July 1 and $3.74 if withdrawal occurred on or after July 1, 1982.

Construction Laborers Pension Trust for Southern California

Worksheet for Determining Length of Payment Period

Employer name _____

(a) Required annual payment $ _____

(b) Withdrawal liability after deductible $ _____

(c) Amount to be amortized = (b)x(1.06000) $ _____

(d) Amortization ratio = (c)/(a) _____

(e) Largest value in Table Col. I which is less than (d) _____

(f) Number of years for value (e) _____

(g) Amount amortized in (f) years = (a)x(e) $ _____

(h) Amount left to amortize = (c)-(g) $ _____

(i) Table Col. II value for (f) years _____

(j) Amount to amortize in final year = (h) x (i); show 0 if (f)=20 $ _____

(k) *Monthly payment* = (a) divided by 12 $ _____

(l) Full payments in final year = (j)/(k) _____

(m) *Number of full payments* = (l) + 12x(f) _____

(n) *Final payment* = (j) - (k)x(l) $ _____

Employer payment schedule:

$ _____ (k) per month for ____ (m) months plus a final payment of $ _____ (n)

October 8, 1982

Construction Laborers Pension Trust
for Southern California

	I	II
Number of Years	Present Value of $1 Per Year	Accumulation of $1
0	.000000	1.000000
1	1.000000	1.060000
2	1.943396	1.123600
3	2.833393	1.191016
4	3.673012	1.262477
5	4.465106	1.338226
6	5.212364	1.418519
7	5.917324	1.503630
8	6.582381	1.593848
9	7.209794	1.689479
10	7.801692	1.790848
11	8.360087	1.898299
12	8.886875	2.012196
13	9.383844	2.132928
14	9.852683	2.260904
15	10.294984	2.396558
16	10.712249	2.540352
17	11.105895	2.692773
18	11.477260	2.854339
19	11.827603	3.025600
20	12.158116	3.207135

i = .0600

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October 8, 1982

CONSTRUCTION LABORERS PENSION TRUST
FOR SOUTHERN CALIFORNIA

Actuarial Certification of
Withdrawal Liability Pools

This is to certify that we have prepared an actuarial valuation to calculate the pools used to assess withdrawal liability to employers who withdraw during the year beginning January 1, 1982. The calculations were performed in accordance with generally accepted actuarial principles and practices.

The certification contains the following attached exhibits:

EXHIBIT I: Unfunded Present Value of Vested Benefits

EXHIBIT II: Withdrawal Liability Pools as of December 31, 1981

EXHIBIT III: Actuarial Assumptions

The valuation was based on information supplied by the auditor with respect to contributions and assets, by the Plan Administrator with respect to the data required on employees and pensioners, and by the Collection Office with respect to withdrawn employers. We have not verified and normally would not verify such information, but we have no reason to doubt its substantial accuracy.

To the best of my knowledge, the information supplied in this actuarial valuation is complete and accurate and in my opinion the assumptions used in the aggregate (a) are reasonably related to the experience of the plan and to reasonable expectations, and (b) represent my best estimate of anticipated experience under the plan.

/s/ James Laws

Certified by: James Laws, F.S.A.
Vice President and Actuary
Enrolled Actuary No. 2726

/s/ Nancy Braun

Reviewed by: Nancy Braun, M.A.A.A.
Associate Actuary

EXHIBIT I

UNFUNDED PRESENT VALUE OF VESTED BENEFITS

Following are the number of participants included in the calculations:

	Year Ended December 31,		
	1979	1980	1981
a. Active vested employees	6,006	6,139	5,727
b. Inactive vested employees	1,464	1,609	1,722
c. Pensioners, beneficiaries, and suspended pensions	7,361	7,621	7,990

The determinations of the unfunded value of vested benefits for withdrawal liability purposes for the past three years are as follows:

	Year Ended December 31,		
	1979	1980	1981
1. Present value of vested benefits based on valuation interest rate	$698,411,000	$794,265,900	$863,610,600
2. Present value of vested benefits based on PBGC investment return rates	569,649,600	609,789,400	587,279,400
3. Assets at market value	167,276,200	215,032,100	225,081,900
4. Ratio funded at PBGC rates (3) ÷ (2)	.29365000	.35263338	.38326204
5. Unfunded value of vested benefits for withdrawal liability purposes (1.00 - (4)) x (1)	$493,322,600	$514,181,200	$532,621,400

EXHIBIT II

WITHDRAWAL LIABILITY POOLS AS OF DECEMBER 31, 1981

Pool Established December 31	Original Amount		Pool Balance on December 31, 1980		Amortized Amount*		Pool Balance on December 31, 1981		
	Basic Pool	Reallocated Pool	Basic Pool	Reallocated Pool	Basic Pool	Reallocated Pool	Basic Pool	Reallocated Pool	Total Pool
1979	$493,322,600	–	$468,656,500	–	$24,666,100	–	$443,990,400	–	$443,990,400
1980	45,524,700	–	45,524,700	–	2,276,200	–	43,248,500	–	43,248,500
1981	45,382,500	$795,500	–	–	–	–	45,382,500	$795,500	46,178,000
	Totals		$514,181,200	–	$26,942,300	–	$532,621,400	$795,500	$533,416,900

*Each pool is amortized annually at the rate of 5% of its original amount.

Note: The sum of the basic pools on December 31, 1981 ($532,621,400) equals the aggregate unfunded value of vested benefits for withdrawal liability purposes on that date (see Exhibit I).

EXHIBIT III

ACTUARIAL ASSUMPTIONS

Investment return and asset valuation:

The unfunded present value of vested benefits for employer withdrawals is given by the formula:

$$\frac{C-A}{C} \times B, \text{ where}$$

A = market value of assets,

B = present value of vested benefits based on valuation investmet return assumption on the applicable withdrawal liability valuation date, and

C = present value of vested benefits based on interest assumptions developed by PBGC for single employer plan terminations on the applicable withdrawal liability valuation date.

The rates referred to in B and C are as follows:

	Year Ended December 31		
	1979	1980	1981
Valuation investment return	6.00%	6.00%	6.00%
PBGC rates:			
(a) Benefit payout period	8.50	9.25	11.00
(b) Seven-year period preceding assumed benefit commencement date	7.75	8.50	10.25
(c) Eight-year period preceding period described in (b)	6.50	7.25	9.00
(d) Deferral periods in excess of 15 years	4.00	4.00	4.00

Administrative expenses: Allowance by discount implicit in investment return rates assumed.

Mortality: Male 1971 Group Annuity Mortality Table with ages set forward one year for participants and set back five years for spouses of participants. For disabled pensioners, the PBGC mortality table for disabled males receiving Social Security benefits for plan terminations prior to December 1, 1980, was utilized.

Retirement age: Varies with entry age as follows:

Age at Entry in Covered Employment	Retirement Age
Under 23	55
23 - 27	57
28 - 32	59
33 - 47	63
48 - 52	65
53 & over	66*

*Or completion of service requirement, if later.
Inactive vested participants are assumed to retire immediately if they have 25 or more years of credited service, at age 62 if they have at least 15 years of credited service but less than 25, and at age 65 if they have less than 15 years of credited service.

Amount of unrecorded past service credit for eligible nonretired participants:

Varies with year of birth as follows:

Year of Birth	Years of Unrecorded Credit
1912 - 1916	5
1917 - 1921	4
1922 - 1926	3
1927 - 1931	3
1932 - 1936	2
1937 - 1941	1
After 1941	0

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE MALCOLM M. LUCAS,
JUDGE PRESIDING

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Plaintiff, vs. CEN-VI-RO CONCRETE PIPE & PRODUCTS, INC., Defendant.	)	No. CV 82-5184-MML
CONCRETE PIPE & PRODUCTS COMPANY OF CALIFORNIA, Plaintiff, vs. CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA, Defendant.	)	No. CV 83-132-MML

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Monday, March 19, 1984

DON MEHLER, CSR
Official Reporter
442 U. S. Court House
312 North Spring Street
Los Angeles, California 90012

APPEARANCES:

For Construction Laborers Pension Trust for Southern California:

COX, CASTLE & NICHOLSON
By: EVERITT G. BEERS
2049 Century Park East, 28th Floor
Los Angeles, California 90067

For Concrete Pipe & Products Company, Inc.:

DIEPENBROCK, WULFF, PLANT & HANNEGAN
By: DENNIS R. MURPHY
455 Capitol Mall, Suite 800
Sacramento, California 95814

[p. 3] LOS ANGELES, CALIFORNIA, MONDAY, MARCH 19, 1984; 10:00 A. M.

(Other Court matters.)

THE CLERK: Item No. 15, CV 82-5184, Construction Laborers Pension Trust for Southern California v. Cen-Vi-Ro Concrete Pipe & Products, for cross-motions for summary judgment.

Counsel, state your appearances, please.

MR. BEERS: Everitt beers, Cox, Castle & Nicholson, for the Construction Laborers Pension Trust.

THE COURT: Good morning.

MR. MURPHY: Dennis Murphy appearing on behalf of Concrete Pipe & Products Company.

THE COURT: Good morning, gentlemen.

I have read and considered what has been filed in this matter. Does either side wish to be heard further?

MR. MURPHY: Your Honor, Concrete Pipe & Products would just like to address a few issues. In our briefs we addressed very technical legal points, and I would just like to point out a few pragmatics of the situation. I think it's necessary to understand, in discussing the constitutional arguments, the retroactive effect of the particular actions. As you know, the unions on behalf of their clients, the employees, demand that employers enter into these multi-employer plans. Employers agree for a certain sum of money and then set their prices for their goods and services based on the contractual rate of pay. And in this case, our client [p. 4] stopped producing the widgets – in this case, concrete pipe – two years before or a year and a half before the act was passed. All their financial transactions are closed. There is no way to recover the money. And now we are being assessed almost two times what we paid as unfunded liability upon withdrawal from the trust fund. And while the act is not retroactive in that it is applying – all the arguments don't go to that – it is retroactive in its effect in its total application to this particular person or this particular

business and should be viewed as such, your Honor, because there is absolutely no way for Concrete Pipe & Products Company to recover one dime of the money by way of increasing its costs of its product. I think that's a very important issue.

I think that also, the act is passed, and the financial impact upon somebody going out of business is disastrous and has to be considered a taking of money from one to another, as the Alton case, which was cited by the Ninth Circuit as good authority, properly points out. To me, that is the practical effect of what is going on. They're going into closed transactions. They're taking money from one and potentially bankrupting one to give money to another, despite contract provisions that specifically prohibit this.

With respect to another area, I would like to [p. 5] point out the pragmatic effect. In this particular case, the trust funds come in with a presumption that their decisions are correct. They are entitled to determine the amount of liability under four formulas. They don't have to state any method which they choose the formula. It can be relevant or not relevant. They can go from 5 percent on actuarial rates to 9, 10, 12, and based on whatever they do, you can go from zero liability to hundreds of thousands of dollars, and their judgment is presumed correct in litigation, and there is no rational basis for this. In fact, the statute on that point not only presumes them to be correct, but is extremely vague in saying what basis they use in making their determination. They don't have to use data. They can use their best estimates of what is correct. And if they don't have sufficient base data, they

can use a sampling of data. And all that is required is that in the aggregate, it be reasonable or their best estimate.

And I feel that all these things have got to be considered in determining whether my clients have been given any real due process in this issue.

THE COURT: All right. Let me ask, Mr. Murphy, do you agree that the threshold question may well be, the factual question, that is, when Concrete Pipe withdrew? If Concrete Pipe did, from a factual standpoint, cease operations in 1979, in essence, withdrawing from the pension trust [p. 6] plan, then we would never reach the constitutional issues in this –

MR. MURPHY: Well, that's our first point, your Honor. We think that we've briefed that capably. I think it comes down to a definition, does permanently cease to cover operations, does the term "permanently" mean lasting forever or does it mean lasting indefinitely, like the opposing side has defined in their brief? We think that this is clearly one that is a permanent cessation of operations under the term "lasting indefinitely."

THE COURT: Well, before we go further into the merits of that question, it is a factual question and will have to be resolved further in processing this case. But in terms of the resolution of that factual dispute, who is to resolve it, the court or an arbitrator?

MR. MURPHY: I think, your Honor, the court is to resolve it, because our position on that is simple. If we did in fact withdraw in 1979, we never came under this act. We were out from under it. We have no obligations under it. It doesn't involve us. The act was passed in

September 26, 1980, and we ceased doing business at this plant on August 17, 1979. And we say that that act involves others, but not us. And its retroactive application only goes back to May of 1980. And clearly, we had stopped producing concrete pipe, we had shipped our equipment to our main plants in [p. 7] Sacramento, we had laid off our employees, we were searching for a new plant in San Bernardino or Riverside. We had done everything possible to terminate our business at that particular plant. And we believe that all the facts are basically undisputed. Both counsel try and draw different inferences from the undisputed facts, but I think the facts are undisputed.

THE COURT: All right. Thank you, Mr. Murphy.

MR. MURPHY: Thank you, your Honor.

MR. BEERS: Your Honor, turning first to the issue of withdrawal, we do think that is an issue that's appropriate for the Court to decide here. All the facts are necessary to decide it. It's just a question of interpreting Section 1383, as to what "permanent" means. We don't think any additional –

THE COURT: So I'm clear as to your position, you do not feel that that factual dispute, the issue and question of the date of withdrawal, is a matter that should be heard by an arbitrator?

MR. BEERS: No, your Honor. We feel that further factual development before an arbitrator would not add to the Court's ability to decide that issue now. But if the Court feels that arbitration is appropriate on the

withdrawal issue prior to the Court interpreting the withdrawal provisions, we point out that it would then be necessary to [p. 8] determine the other provisions of the act, which are facial constitutional challenges, and decide the constitutionality of those other provisions as discussed in the papers. Therefore, even if –

THE COURT: Well, I think Shelter Framing said that the constitutional issues, as opposed to factual, do not have to be submitted to the arbitration process.

MR. BEERS: Correct, your Honor; along with Peick, Textile Workers, and Republic.

THE COURT: All right. Go ahead, Mr. Beers.

MR. BEERS: Okay. Responding to what I think are three points made by Mr. Murphy on his presentation, first of all, he talks about the need to recoup costs in the future for the liabilities incurred by Concrete Pipe at its plant in the past. I point out that withdrawal liability is based upon the employer's proportionate share at the time it withdrew of the employee benefits vested at that time, based upon that particular employer's proportionate share of past contributions, as opposed to total contributions, to the trust. There is no future recouping of costs in the future. This is simply Concrete Pipe paying its fair share of benefits promised to employees at the time it withdrew.

Referring to the takings discussion made by Mr. Murphy, he mentions the case of Alton Railroad. Of course, Alton Railroad is one of the United States Supreme [p. 9] Court cases, along with the cases striking down state child-labor laws and the NRA legislation during the early

part of the depression, which the Supreme Court has since, of course, eschewed. The modern rule is, in areas of economic regulation, the court hunts through the legislation based upon a not arbitrary or unreasonable standard, and does not address the underlying wisdom of the legislation.

In this case, the three cases that have addressed this issue, the Second, Fourth, and Seventh Circuits in Textile Workers, Republic, and the Peick decisions, have all upheld the MPPAA unanimously.

Particularly turning to the takings issue, there is no takings involved here. All three of those cases have held that for the takings laws to apply, there has to be a physical taking of property by governmental action, such as garnishment or claim of delivery or similar procedures where the government goes out and seizes property. That is not the case here.

The last argument made by Mr. Murphy was regarding the presumption attached to the initial decision of the trustees regarding the amount of withdrawal liability. There's no constitutional question here. Congress every day and state courts every day set the burden of proof on one side or the other for any matter to be decided by a court. This is simply setting of a burden of proof.

[p. 10] Also, the reasonable actuarial standards test used in the MPPAA for judging and controlling the trustees' setting of withdrawal liability is standard economic legislation. This is economic legislation. It's not legislation in an area involving protective, constitutional conduct, such as freedom of speech. The United States Supreme Court has again and again upheld economic

regulations requiring various organizations to set reasonable prices or reasonable routes.

In closing, your Honor, I just want to point out that, as carefully discussed in our papers, three circuit-court opinions have addressed every single issue in this case and have unanimously upheld the MPPAA on every single aspect challenged by Concrete Pipe. The case of Shelter Framing, which is discussed at length in Mr. Murphy's papers, addressed the sole issue of the constitutionality of the retroactive date of the MPPAA. That case expressly limits its decision to that small part of the MPPAA.

While the Construction Laborers Pension Trust urges your Honor to follow the three decisions that have addressed every issue of the case, if your Honor for some reason finds part of Shelter Framing to be applicable to the facts of this case, we request that your Honor stay this action until the Supreme Court decides Shelter Framing. It is –

[p. 11] THE COURT: The petition for certiorari is still pending before the Supreme Court, is it not?

MR. BEERS: Correct, your Honor. The petition for cert is pending, but the joint appeal, which is part of the same decision of Gray, has had probable jurisdiction noted. That's a federal appeal. The Supreme Court has noted jurisdiction in Gray, scheduled oral argument for April, and the petition for cert has been at each session of the court left pending, which I understand is the normal procedure for the United States Supreme Court when it has two cases that involve the same factual issue, to either grant cert or note probable jurisdiction on one and

just keep the other pending. Since the Supreme Court next to never, except for maybe the Sony case and a couple others, carries decisions over from term to term, I would expect a decision to be written by the United States Supreme Court by the end of this term in July. So if the Court finds Shelter Framing to be at all controlling, I simply request the Court stay further decision in this case until that decision comes out by the end of the term in July.

The last comment I have, your Honor, is regarding a case that was cited in the last set of papers exchanged by the parties, and that is an NLRB decision called Illinois Coil Spring Company. First of all, your Honor, the context in which that case was cited is to support Concrete Pipe's [p. 12] contention that it would have not had to bargain with the unions involved if the plant at Shafter had been moved to another location. Illinois Coil Spring Company is a National Labor Relations Board decision, not a court decision. However, the dissent in there very ably points out how the Board's decision is inconsistent with the United States Supreme Court case of Fiber Products, which held in an analogous situation that there is a duty for mandatory collective bargaining in such a situation. And also, the dissent in that case cites numerous previous NLRB decisions with which the Illinois Coil Spring Company case is inconsistent.

No further comments, your Honor, unless you have questions.

THE COURT: All right. Thank you, Mr. Beers.

Anything further, Mr. Murphy?

MR. MURPHY: One or two, your Honor.

I think your concern, as I sense it here, is: Do you have the right to determine the factual issues in this case? I figure that this is analogous to decisions that come before you all the time. I'm sure there are many people, parties come before you to determine whether they are bound to arbitrate under a contract, and you're quite familiar with the fact that you have to determine the threshold issue as to whether they have contractually [p. 13] obligated themselves to arbitrate, and, if they have, then you go arbitrate all the facts.

Basically, we are saying there is no contract here requiring us to arbitrate. This statute doesn't require us to arbitrate, because this statute doesn't apply to withdrawals that occurred before 1980; May of 1980, to be precise. And I think that that is a clear analogy to the normal cases to compel arbitration that come before this court. It's a determination whether there's a threshold requirement that you go to arbitration. And I don't think the Congress said that people who withdrew before 1980 have to go to arbitration. I think they said that people who withdrew after April 29, 1980, do, but those who did before that point do not have to. And that's why we think that this factual dispute is properly before you.

And then, of course, our position is that the Ninth Circuit Court of Appeals' Shelter Framing decision is in fact controlling, because it did in fact determine most of the elements of these substantive due-process claims, and the Ninth Circuit determined those adversely to the pension trust, and the Ninth Circuit is, of course, controlling in this district.

Thank you, your Honor.

THE COURT: All right. Thank you, Mr. Murphy and Mr. Beers. The matter –

[p. 14] MR. BEERS: Your Honor, just one sentence of clarification?

THE COURT: I think we must stop the ceaseless oscillation of argument, gentlemen. The matter will stand submitted.

MR. BEERS: Thank you, your Honor.

CERTIFICATE

I certify that the foregoing is a true and correct transcript from the stenographic record of proceedings in the foregoing matter.

/s/ Don Mehler — June 26, 1984
Don Mehler, Official Reporter — Date

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CONSTRUCTION LABORERS PENSION TRUST FOR SOUTHERN CALIFORNIA,

Plaintiff,

v.

CEN-VI-RO, CONCRETE PIPE & PRODUCTS, INC.,

Defendants.

AND CONSOLIDATED ACTION.

NO. CV-82-5184-MML

ORDER GRANTING IN PART PLAINTIFF PENSION TRUST'S MOTION FOR SUMMARY JUDGMENT, DENYING DEFENDANT CONCRETE PIPE'S MOTION FOR SUMMARY JUDGMENT, AND COMPELLING PARTIES TO SUBMIT TO ARBITRATION

(Filed Apr. 4, 1984)

The parties' cross-motions for summary judgment came on for hearing before the Court, the Honorable Malcolm M. Lucas, District Judge, presiding, on March 19, 1984. Having duly considered the papers submitted and the views advanced at oral argument, the Court hereby grants in part the motion of Construction Laborers Pension Trust of Southern California, denies in toto the motion of Concrete Pipe & Products, Inc., and orders the parties to submit to arbitration.

BACKGROUND

A. Procedural Background

Plaintiff Construction Laborers Pension Trust for Southern California (Pension Trust) filed its action in 1982

under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§1001 et seq., to collect amounts allegedly owed by defendant Concrete Pipe & Products Co. (Concrete Pipe) under amendments to ERISA establishing so-called employer withdrawal liability. In its consolidated action, Concrete Pipe seeks declaratory relief. In its motion for summary judgment on the complaint for declaratory relief, Concrete Pipe contends first that it withdrew from the Pension Trust plan prior to the effective date of the ERISA withdrawal liability amendments, which became law through the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) (codified at 29 U.S.C. §§ 1381-1461 and elsewhere). Concrete Pipe argues further that the MPPAA unconstitutionally denies it substantive due process, procedural due process, the right to just compensation upon a taking, and the right to a trial by jury. The Pension Trust, on the other hand, contends in support of its motion for summary judgment that the MPPAA is constitutional and requests "that this dispute . . . be ordered to arbitration for resolution of the amount of Concrete Pipe's withdrawal liability."

B. Factual Background

The parties have submitted a substantial statement of stipulated facts.

Prior to December 1, 1976, Cen-Vi-Ro, a manufacturer of concrete pipe in Shafter, California, and the Southern California District Council of Laborers (Union) were signatories to a collective bargaining agreement that required payments to the Pension Trust. On December 1, 1976, Concrete Pipe became the owner of the plant and

continued to observe the terms of the collective bargaining agreement. In 1978 Concrete Pipe and the Union entered into a new agreement that continued the Pension Trust obligations of Concrete Pipe.

The collective bargaining agreement of 1978 specified that it would remain in effect until June 30, 1981, and then thereafter from year to year unless either the Union or Concrete Pipe gave notice of a desire to modify or terminate the agreement. The agreement further provided that

> Such written notice shall be given at least 60 days prior to June 30 . . . [and if] no agreement is reached by June 30 . . . the Employer or the [Union] may thereafter give notice [that on a specified date at least 15 days after the notice] the Agreement shall be considered terminated.

In August of 1979, Concrete Pipe ceased production of concrete pipe at the Shafter plant. It stopped purchasing materials, laid off employees, and started removing machinery for shipment to its plant in Sacramento. Through October 1979 to the reopening of the plant in November 1981, only two full-time employees worked at the Shafter plant – one from October 1979 through December 1980, and the other from November 1979 to the reopening. One laborer worked forty hours in May 1980, an occurrence which brought about Concrete Pipe's last payment to the Pension Trust in the same month.

In the spring of 1981, both parties to the collective bargaining agreement sent timely notice of a desire to negotiate a new collective bargaining agreement. Negotiations were conducted in October and November 1981. On November 30, 1981, Concrete Pipe sent to the Union a

letter stating that Concrete Pipe was withdrawing its recognition of the Union.

The plant at Shafter had no production whatsoever from September 1979 through October 1981. In November 1981 the plant was reopened. During that month 10.58 tons of pipe were produced. In contrast, in of July 1979. 773.05 tons were produced.

C. Legal Background

Prior to the MPPAA, an employer's withdrawal from a multi-employer plan created only contingent liability. Under the MPPAA, the withdrawing employer must immediately begin to pay a fixed and certain debt to the plan. The MPPAA was signed into law by President Carter on September 26, 1980. Its provisions, however, were expressly made retroactive to April 29, 1980. 29 U.S.C. § 1461(e)(2)(A).

DISCUSSION

The parties' arguments principally address the constitutional issues referred to above. As a threshold matter, Concrete Pipe would have the Court summarily decide that it withdrew from the Pension Trust plan prior to the effective date of the MPPAA, which, according to the Ninth Circuit, is September 26, 1980. *See Shelter Framing Corp. v. Pension Ben. Guar. Corp.*, 705 F.2d 1502 (9th Cir. 1983) (retroactivity provision of MPPAA is unconstitutional). Apparently, Concrete Pipe would also have the Court decide that the MPPAA is unconstitutional. For its part, the Pension Trust would seemingly have the Court

determine first the constitutional issues and then the factual dispute over the date of Concrete Pipe's withdrawal.*

The Court is of the view that the factual dispute must be decided first because its resolution could render the constitutional questions moot. The Ninth Circuit has held with respect to its own deliberations that it should not reach constitutional issues whenever there are nonconstitutional grounds upon which it can decide the case. *E.g., Polar Shipping Ltd. v. Oriental Shipping*, 680 F.2d 627, 630 (9th Cir. 1982). This rule applies to the District Courts, even when the parties have not considered the possible nonconstitutional basis for deciding the dispute between them. *Correa v. Clayton*, 563 F.2d 396, 400 (9th Cir. 1977).

In specific terms, the factual question is this: Did Concrete Pipe permanently close its Shafter plant in 1979, as Concrete Pipe maintains, or did it, as the Pension Trust argues, simply "mothball" the facility pending its relocation elsewhere in the Union's jurisdiction or pending an increase in business such as apparently occurred in 1981? Having already determined that this question must be resolved prior to the resolution of the myriad constitutional questions, the Court must decide at this point whether the factual question can be determined by it or

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* At oral argument, neither Concrete Pipe nor the Pension Trust wanted the factual question referred to arbitration, notwithstanding the posture in which the Pension Trust's motion for summary judgment comes before the Court, namely, as a motion for a judgment finding MPPAA constitutional *and* an order referring the matter to arbitration.

whether administrative remedies should first be exhausted.

There are two basic types of exhaustion requirements. One is judicially developed, principally to prevent premature judicial interference with agency processes. *Weinberger v. Salfi*, 422 U.S. 749, 765 (1976). The judicial requirement is flexibly applied; the courts are free in given cases to refine the requirement to fit the peculiar facts before them. *Montgomery v. Rumsfeld*, 572 F.2d 250, 253 (9th Cir. 1978). The second basic type is a statutory specified prerequisite to the exercise of jurisdiction by the courts. *Salfi*, 422 U.S. at 766. With this type there is no room for flexibility; failure to exhaust the administrative remedy defeats jurisdiction. *Montgomery*, 572 F.2d at 253. Here, the MPPAA provision on arbitration, 29 U.S.C. § 1401, applies. Despite its seemingly mandatory tone ("any dispute between an employer and the plan sponsor . . . shall be resolved through arbitration"), it is apparent that failure to exhaust the arbitral remedy does not defeat a District Court's jurisdiction. Section 1401(b)(1) explicitly provides that a plan sponsor may bring an action for collection "[i]f no arbitration proceeding has been initiated." Given these statutory terms, it seems reasonable to conclude, as did the District Court in *I.A.M. Nat'l Pension Fund v. Schulze Tool & Die Co.*, 564 F. Supp. 1285, 1293 (N.D. Cal. 1983), that section 1401 codifies the judicial requirement of exhaustion. *See Salfi*, 422 U.S. at 766 (indicating that some statutory requirements may simply codify the judicial requirement).

The judicial requirement must be applied with an understanding of its purposes. *Aleknagik Natives Ltd. v.*

Andrus, 648 F.2d 496, 499 (9th Cir. 1980). Where the pursuit of the administrative remedy seems inapt, a number of exceptions may apply, *id.*, although when, as here, an enactment of Congress enters the scene, the range of the court's discretion may be narrower than it would be in the case of an exhaustion requirement that is entirely judicial in origin, *id.* at 499-500; *Schulze Tool*, 564 F. Supp. at 1293. Administrative remedies need not be pursued when those remedies would be inadequate or inefficacious. *Aleknagik Natives*, 648 F.2d at 499. Nor need they be exhausted when exhaustion would be futile or when exhaustion would result in irreparable injury that immediate judicial review could prevent. *Id.* Finally, exhaustion is not required when the administrative proceeding would be void. *Id.*

None of these exceptions applies in this case. Given the elaborate framework established by Congress to guide the arbitrator, there is no reason to believe that the administrative remedy would be inadequate or inefficacious. See *Republic Industries, Inc. v. Central Penna. Teamsters Pension Fund*, 693 F.2d 290, 294-95 (3d Cir. 1982). Neither party faces any irreparable injury that only prompt judicial action can prevent. Whether exhaustion would be futile and whether the arbitral proceeding would be void are more complex questions requiring separate discussion.

It could be argued that arbitration would be futile because Concrete Pipe has mounted a facial challenge to the statute. *See Shelter Framing*, 705 F.2d at 1509 (futile to compel exhaustion when constitutional issues are to be resolved). Granting for purposes of this analysis that

Concrete Pipe's challenge to the MPPAA is in large measure facial, all the issues raised by Concrete Pipe would nonetheless be mooted by a factual determination in Concrete Pipe's favor. *Cf. id,* (arbitration would not eliminate assessed liability); *Republic Industries,* 693 F.2d at 296-97 (arbitration could not moot Republic's constitutional claims because arbitrator could not possibly find that Republic owed no money as a result of its withdrawal). Hence, the Court concludes that arbitration would be appropriate. In reaching this conclusion, the Court distinguishes *Peick v. Pension Benefit Guaranty Corp.,* 724 F.2d 1247 (7th Cir. 1983), on the grounds that the employer plaintiffs there (or their members, in the case of the organization plaintiffs) had withdrawn after the effective date of the MPPAA and so faced "actual injury" that required resolution of the constitutional issues. 724 F.2d at 1259. Similarly, the pension fund and fund trustees in *Peick,* unlike the instant trustees, had chosen *not* to assess withdrawal liability and so faced remedial action by the defendant Pension Benefit Guaranty Corp. 724 F.2d at 1260.

The Court's conclusion regarding futility makes it necessary to consider the possibility of void proceedings in arbitration and places in controversy Concrete Pipe's contention that compulsory arbitration under the MPPAA deprives it of its right to a trial by jury. The result of an administrative proceeding is a nullity if the proceeding was infected with fundamental procedural error. *Winterberger v. Teamsters Local 162,* 558 F.2d 923, 925 (9th Cir. 1977). Presumably, if Concrete Pipe had a right to a jury determination of the issues that the MPPAA initially commits to arbitration, the arbitral result would be void. The

conclusion that Concrete Pipe desires does not follow, however, because there is no constitutional infirmity in a congressional decision to vest factfinding in a tribunal other than a jury when, as in the case of the MPPAA, Congress creates "statutory public rights." *Textile Workers Pension Fund v. Standard Dye & Finishing Co.,* No. 83-7004 (2d Cir. Jan. 9, 1984); *Peick,* 724 F.2d at 1277; *Republic Industries,* 718 F.2d at 642.

Finally, there is no merit to the position advanced by Concrete Pipe that the MPPAA arbitration provisions do not apply to this dispute because the liability issue hinges on the timing of withdrawal. The Pension Trust has determined that Concrete Pipe withdrew after September 26, 1980. Thus, the instant dispute concerns liability under the MPPAA, notwithstanding Concrete Pipe's contention that it withdrew prior to the effective date. *See Schulze Tool,* 564 F. Supp. at 1289-90.

ORDER

Summary judgment is granted in favor of the Pension Trust with respect to the issue of the right to a jury trial. In all other respects the motion of the Pension Trust is denied without prejudice to its renewal at an appropriate juncture.

Concrete Pipe's motion for summary judgment is denied in its entirety. With the exception of that portion of the motion pertaining to the right to a jury trial, the motion is denied without prejudice to its renewal at an appropriate juncture.

The parties are ordered to submit to arbitration in accordance with the applicable provisions of ERISA as amended by the MPPAA.

The Court retains jurisdiction of these consolidated actions pending a timely motion to enforce, modify, or vacate the arbitrator's award.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the Clerk shall serve, by United States mail, copies of this Order on counsel for the parties in this matter.

Dated: April 4, 1984

/s/ Malcolm M. Lucas
Malcolm M. Lucas
United States District Judge

American Arbitration Association

In the Matter of Arbitration)
)
Between)
)
CONSTRUCTION LABORERS PENSION)
TRUST FOR SOUTHERN CALIFORNIA)
)
and)
)
CONCRETE PIPE AND PRODUCTS)
COMPANY, INC.)
)
_____)

DECISION OF ARBITRATOR

Kenneth M. Schwartz
Arbitrator
141 South Linden Drive
Suite 203
Beverly Hills, CA 90212
Telephone: (213) 274-9734

I
The Proceedings

This arbitration hearing is being conducted pursuant to an order of the United States District Court for the Central District of California wherein Judge Malcolm Lucas ordered the parties to arbitrate the dispute existing between them. The issues in this matter have been bifurcated with the threshold question to be decided of whether the Company has a withdrawal liability in the first instance. It was understood and agreed that should it

be determined that the Company has incurred a withdrawal liability, then and in that event, the Company could, if it cared to do so, challenge the calculation of the amount of the liability in a subsequent hearing.

Counsel for the parties selected the undersigned to act as arbiter to resolve the dispute in accordance with the rules established by the American Arbitration Association.

Parties to the dispute are:

> Concrete Pipe and Products Company of California, herein called "Company," and Construction Laborers Pension Fund, herein called "Fund."

Appearing as legal counsel for the parties were:

> Dennis R. Murphy, Esq., of Diefenbrock [sic], Wulff, Plant & Hannegan, for the Company.
>
> Everett G. Beers, Esq., of Cox, Castle & Nicholson, for the Fund.

The hearing was held on June 25, 1987, in the offices of the American Arbitration Association at Los Angeles, California. A stenographic record was made of the proceeding by a Certified Shorthand Reporter. All witnesses testifying in this arbitration were sworn as was the Arbitrator.

Counsel for the parties were afforded a full and complete opportunity to enter into stipulations, both oral and written; present documentary evidence; examine and crossexamine witnesses; make arguments in support of their respective positions; and file opening and closing briefs.

In a document received in evidence as Joint Exhibit 2, the parties submitted in evidence a Joint Stipulation of Facts as well as opinions and orders from both the United States District Court and The Court of Appeals.

For the purpose of this proceeding, the Stipulation of Facts will not be repeated in *haec verba*, but reference will be made to facts relevant to the resolution of this matter. References may also be made to the District Court's comments as well, as they may be material.

II

The Factual Background

Prior to December 1, 1976, Cen-Vi-Ro, a manufacturer of concrete pipe in Shafter, California, and the Southern California District Council of Laborers, herein called "the Union," were signatories to a Collective Bargaining Agreement which, among other things, obligated the Employer to make payments to the Fund on behalf of employees covered by the Agreement.

On December 1, 1976, the Company, i.e., Concrete Pipe, acquired by purchase the Shafter, California, plant and took over the operation of the production of concrete pipe. As a result of the acquisition of the plant, the Company assumed the Collective Bargaining Agreement of its predecessor and continued to abide by its terms, including making contributions to the Fund.

In 1978, the Company and the Union entered into a new Agreement which, by its terms, required contributions to be made to the Fund for employees for hours worked at the Shafter facility. By its terms, the Agreement

was to remain in effect until June 30, 1981. It further provided for automatic renewal from year to year unless either the Union or the Company gave timely written notice of a desire to renegotiate its terms prior to June 30, 1981, or prior to June 30th of each subsequent year of the automatic renewal. It further provided that such written notice shall be given sixty (60) days prior to June 30, 1981, or subsequent June 30th of each year, and if no agreement was reached by June 30, 1981, or thereafter, the Employer or Union could give written notice to each other that on a " . . . specified date not less than fifteen (15) days after the date of said notice, the Agreement shall be considered terminated."

Up until August 1979, the Shafter plant was in full and continuous production of concrete pipe. In August 1979, the Company ceased its production of concrete pipe at Shafter. Further, it stopped purchasing materials; it laid off employees; and started removing machinery for shipment to its Sacramento plant. From October 1979 to the reopening of its plant in November 1981, only two employees worked at the Shafter plant, one of whom worked from October 1979 through December 1980, and the other worked from November 1979 to the reopening in November 1981. The last contribution made by the Company to the Fund was in May 1980.

Throughout the period of August 1979 through November 1981, the Company searched for additional work in the Shafter-Bakersfield area by sending its salesmen into the area on a regular basis.

In the latter part of 1981, the Company became a successful bidder on a project in the Bakersfield area,

known as Wheeler Ridge. As a result of such bidding, the Company was awarded two of the four contracts it bid on calling for the production of 7,000 tons of concrete pipe.

As a consequence of receiving the two contracts, the Company reopened its Shafter plant in November 1981 and employed persons within the classifications of laborers covered by the scope of the 1978-1981 Collective Bargaining Agreement.

In the Spring of 1981, and prior to the Company being awarded its newly bid upon contracts, both the Company and the Union sent timely notices to each other in accordance with their Agreement, giving notice to each other of their desire to negotiate a new bargaining agreement. Negotiations were conducted in October and November 1981. On November 30, 1981, the Company sent the Union a letter stating that the Company was withdrawing recognition of the Union and that an impasse in negotiations had been reached. Said notice sent to the Union of the Company's intended termination of the Agreement was pursuant to the notice provision of the Agreement and which would be effective as far as the date of termination was concerned no earlier than December 15, 1981.

III

The Factual Question to be Determined

In order to determine whether or not there is a withdrawal liability to the Fund by the Company, the determination of the status of the closing down of the Shafter plant is paramount.

Judge Malcolm Lucas phrased the question as follows:

> "Did Concrete Pipe permanently close its Shafter plant in 1979, as Concrete Pipe maintains, or did it, as the Pension Trust argues, simply 'mothball' the facility pending its relocation elsewhere in the Union's jurisdiction or pending an increase in business such as apparently occurred in 1981?"

IV

Contentions of the Parties

The Company contends that it is not liable for withdrawal liability because it effected a "complete withdrawal" when it closed its Shafter plant in August 1979 which date is prior to September 26, 1980, the effective date of MEPPA. It is the contention of the Company that the closure of the Shafter plant in August 1979 constituted a permanent cessation of covered operations as that term is defined in MEPPA; hence, the provisions as to withdrawal liability are not applicable to it. Further, the Company contends that Congress recognized the fact that a Company which had permanently ceased a covered operation could reopen at a later time when Congress provided for adjusting the withdrawal liability when such incident occurred (29 U.S.C. § 1387 of ERISA).

The Fund contends that 29 U.S.C. § 1381(a) requires a permanent cessation of covered operations before a "complete withdrawal" occurs and that the temporary idling of the plant in 1979 did not qualify as a complete withdrawal because the plant later went back into full production for a substantial period of time. Hence, the

Fund contends that a "complete withdrawal" did subsequently occur on December 15, 1981, the date the Company terminated its agreement with the Union and ended its obligation to contribute to the Fund.

V

Statement of the Law

The applicable provisions of the law are found in 29 U.S.C. § 1381, *et seq.*, which deal with withdrawal liabilities from multi-employer plans after September 26, 1980, and are as follows:

1. 29 U.S.C. § 1383(a) defines "complete withdrawal" as:

> "(a) For purposes of this Part, a complete withdrawal from a multi-employer plan occurs when an employer –
>
> "(1) permanently ceases to have an obligation to contribute under the plan, or
>
> "(2) permanently ceases all covered operations under the plan."

While there are certain modifications applicable to the Building and Construction Industry and the Entertainment industry, there was no contention made by either of the parties that said modifications were relevant here.

2. 29 U.S.C. § 1383(e) fixes the date that a complete withdrawal occurs as follows:

> "(e) For purposes of this part, the date of complete withdrawal is the date of cessation of

the obligation to contribute or the cessation of covered operations."

3. 29 U.S.C. § 1392(a) provides:

"(a) For purposes of this part, the term 'obligation to contribute' means an obligation to contribute arising –

"(1) Under one or more collective bargaining (or related) agreements or

"(2) As a result of a duty under applicable labor-management relations law, but does not include any obligation to pay withdrawal liability under this Section or to pay delinquent contributions . . . "

VI

Discussion

Counsel for the parties have no disagreement as to the facts nor have they any disagreement as to the applicable law involved.

The issue to be determined is whether or not the Company met the definition of "complete withdrawal" when it closed its plant in Shafter, California, in August 1979. Judge Lucas in posing the question simply asks the question of whether the closure in 1979 of the Shafter plant was permanent or merely a "mothballing" of the plant; in other words, a temporary situation.

Counsel for the Company notes that the facts presented strongly support the contention that the Company *intended* the closure to be of a permanent nature. In his argument to support his position further, counsel points out that attempts were made to relocate the plant and

also to negotiate out of the Company Lease, which counsel contends are facts consistent with the intention to permanently cease operations.

The dictionary definitions are not of a great deal of help in determining the issue here. While Webster's Dictionary does define "permanent" as "lasting indefinitely" and further Webster defines the word "indefinite" by using the term as having "no precise limits," nonetheless, Webster also defines "permanent" as "lasting *indefinitely without change*" (emphasis mine). Black's Law Dictionary defines "permanent" as *"fixed, continuing, lasting, stable, enduring, not subject to change* but *not necessarily perpetual* (emphasis mine). Frankly, the definitions do not resolve the issue, but simply lends itself to interpretations as to what length of time must elapse before a "temporary" closing becomes "permanent." The very fact that the word "indefinite" is defined in Webster's Dictionary as having "no precise limits" is indicative of the ambiguity which exists when trying to apply the strict definitions to the facts.

Needless to say, when making the determination as to whether a "complete withdrawal" has occurred, the test to be applied is an objective test. The expression of intent to withdraw is irrelevant to the determination of actual withdrawal. *IAM National Pension Fund Benefit Plan C v. Stockton TRI Industries*, 727 F.2d 1204 (DC C.A. 1984). Hence, the overt manifestation of the acts of the Company is the determining factor.

In the instant case, there were documents and testimony in support of the Company's contention that the closing in August 1979 was intended by the Company to

be a permanent closure. Notwithstanding the Company's intent, the plant was reopened for full production in November 1981 which negates a determination of permanent cessation of operations.

Both counsel have cited the case of the *United Food and Commercial Workers v. G. Bartusch Packing Co.*, 546 F.Supp. 852 (1982) in support of their respective positions. Accordingly, an analysis of the case is warranted.

In *Bartusch*, the Employer had shut down his operation prior to the effective date of MEPPA. At the time of the closure, all the employees were laid off indefinitely. It was conceded that the Employer intended the closure to be temporary in that he hoped to obtain appropriate financing to reopen the plant and resume operations. The Employer's attempts to obtain financing were unsuccessful and as a result thereof, the plant never reopened and the employees were never rehired.

The Pension Plan argued that since the Employer had not intended the closure to be permanent but in fact intended it to be temporary, the complete withdrawal had not occurred prior to the effective date of MEPPA; hence, a withdrawal liability was incurred.

The Court disagreed with the argument of the Pension Plan when it held that the intent of the Employer was irrelevant in determining whether a permanent cessation of covered operations occurred. The Court stated:

> "Regardless of its intention . . . the failure of the plant to ever reopen means that the initial closing was permanent" (*Id.*, at 857).

Counsel for the Fund in the instant case has relied on the *Bartusch* case in support of his argument that intent is immaterial and the cold facts are that the Company did reopen its plant for full production in November 1981.

On the other hand, counsel for the Company looks to the *Bartusch* case in support of his argument that a "permanent cessation of covered operations can occur even if an employer has the ability and even the intent to reopen."

In reading the *Bartusch (supra)* and *Stockton TRI Industries (supra)* cases, it appears convincingly to the undersigned that intent is irrelevant and the objective test to determine when the complete withdrawal has occurred is the standard to be used.

While there was considerable evidence to the effect that the Company had attempted to locate a new plant in the San Bernardino-Riverside area, nonetheless, there was also evidence to the effect that two employees worked at the Shafter location at such duties as acting as plant custodian, plant security and answering calls regarding the unsold inventory. Further, the Company renewed its Lease for an additional year. Still further, there is evidence that during the period of the closure from August 1979 to November 1981, salesmen were in the Shafter-Bakersfield area attempting to obtain orders for work.

Last, but not least, the fact that the Company bid on four (4) contracts and were awarded two (2) contracts for the production of concrete pipe resulting in the plant reopening and employing persons within the classifications of laborers covered by the scope of 1978 to 1981 is a

fact that cannot be ignored in imposing the objective test in determining when a complete withdrawal occurred.

Parenthetically, the fact that the Company gave notice to the Laborers' Union in the Spring of 1981 of its desire to renegotiate the Collective Bargaining Agreement for the Shafter plant is wholly inconsistent with the Company's position that there was a cessation of covered operations at the time the Shafter plant closed in August 1979.

VI

Conclusion

It is concluded, therefore, that based upon the objective facts and in answering the factual question raised by Judge Malcolm Lucas, it is found that:

> Concrete Pipe did not permanently close its Shafter plant in 1979 but simply "mothballed" the facility pending an increase in business as a result of which it reopened its plant and hired employees in classifications covered by the Labor Agreement. Accordingly, Concrete Pipe is liable under MEPPA for withdrawal liability.

Dated: August 26, 1987

/s/ Kenneth M. Schwartz
KENNETH M. SCHWARTZ
Arbitrator

(Certificate of Service Omitted in Printing)